United States Court of Appeals
for the Second Circuit

APPENDIX

77-7037

In The

United States Court of Appeals

For The Second Circuit

B

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX - VOLUME 13

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to buy franchises at least during 1967. Did that activity ever come to an end?

A Yes. That came to the end after I went into the grand jury and asked --

Q Tell us --

A It ended then.

Q Approximately what date was that?

A In 1968.

Q Had you ever sold any franchises?

A I had a lot of interested people.

Q Were there any difficulties in connection with selling franchises that related to the inability to obtain cars and the delays?

A Yes.

Q Would you state what that was, please?

A I had people associated with me that were working on franchising, and after holding numerous meetings with interested prospective brokers they would suddenly have no interest. We found eventually -- I suppose I can't tell that. I can't talk of what happened.

THE COURT: These people can be called as witnesses if they had anything to say.

THE WITNESS: Can I tell what happened or --

MR. PERSON: Apparently not.

THE COURT: You say you had meetings with people who were interested in purchasing franchises?

THE WITNESS: Yes.

THE COURT: Did any of them purchase?

THE WITNESS: No. Several days later they completely had no interest.

THE COURT: This was one meeting or a series of meetings?

THE WITNESS: I had regular dinner meetings. I had one big meeting at the Charter House Restaurant in Buffalo where there was between 20 and 30 interested brokers.

THE COURT: When was that?

BY MR. PERSON:

Q Prospective brokers you mean?

A People interested in becoming an automotive broker.

THE COURT: You had a meeting at the Charter House Restaurant?

THE WITNESS: Yes. In Buffalo.

THE COURT: When was that?

THE WITNESS: 1967.

THE COURT: When?

THE WITNESS: October or November, I believe.

THE COURT: How many prospects did you have there?

THE WITNESS: Between 25 and 30, and I had recalled -- since my records were stolen though -- some of the names of the people that were at that meeting.

MR. PERSON: We won't go into that.

THE COURT: In other words, what happened as a result, without getting into the conversations as to why?

THE WITNESS: Within two or three days after people said that they were very interested in becoming a broker, they all of a sudden didn't want any part of becoming a broker.

THE COURT: Two or three days after the meeting they all said this?

THE WITNESS: Yes.

BY MR. PERSON:

Q Did you mention to them what your sources of supply were for automobiles?

A We talked about furnishing all makes and models of automobiles.

Q Did you respond by telling them that your sources were what they were.

THE COURT: What does that mean? Let's get his testimony, not yours.

What did you tell them at the dinner meeting about your sources of supply?

THE WITNESS: That we would supply them with training equipment, automobiles --

THE COURT: What did you say at the dinner meeting about the sources of supply?

MR. PERSON: Automobiles and not training.

THE WITNESS: I told him that their source of supply, they could take and get any make or model of automobile that they wanted, and that included Chevrolets, Pontiacs, Fords, Cadillacs, and every other type of car.

BY MR. PERSON:

Q Did you tell them where you were getting these automobiles from?

A From Nabcor, which was the National Automobile Brokers Corporation, which was franchising this automobile brokerage.

THE COURT: Are you finished?

A And that any type of automobile they wanted was available in this type of franchise.

THE COURT: Did you say anything else to them about your sources of supply at that dinner meeting?

THE WITNESS: I think there was a couple of prospective brokers that asked where the cars would come from.

THE COURT: What did you answer?

THE WITNESS: I answered that all the automobiles were built at the factory.

(Laughter)

THE COURT: Did you say anything else at that dinner meeting about sources of supply other than what you have told us?

THE WITNESS: Only about Nabcor, the system, and what we were doing -- it's funny but it's true, darn it.

THE COURT: Anything else about sources of supply? Finish that subject before the recess.

THE WITNESS: The sources of supply was through the system, and there was no problem in supply at the time we were doing that. There was not even a question originally.

THE COURT: We will take our recess.

(Recess)

T5 Q Were you able, according to the records, were you able to obtain a car for your daughter -- do you know how many cars you obtained during 1967, by the end of the year, if any?

A I don't recall.

MR. PERSON: Mr. Kaplan, will you stipulate for the record as to that?

THE WITNESS: Mr. Kaplan, could you stipulate how many cars I received?

MR. PERSON: There were no cars received during that period 1967 up to the end of the year.

MR.KAPLAN: No, not at all. The witness's daughter received a car on December 12, 1967.

MR. PERSON: I was not remembering the daughter's car.

MR. KAPLAN: Mr. Vosseler was in 1968 and Mr. Casey, isn't that right?

MR. PERSON: I don't have the date here because Casey, he received it January 3, 1968.

MR. KAPLAN: I will stipulate that is all your records show, but I won't stipulate that is all there were.

THE COURT: You stipulate that the records show the only car received by General in 1967 was the daughter's car.

Q Do you know a Mr. Hennessey in the Buffalo area?

A Yes, I do.

Q Who is he associated with?

A Mr. Hennessey ran Econo-Car, which was a daily rental agency.

Q Do you know what business the agency was in? Are you able to describe that business?

A Yes, he handled daily rental cars. In other words, that type of business where a person goes in every day and rents an automobile for so much a mile.

Q Did you ever see any location that he had?

A Yes. His location was and still is on Genesee Street in Cheektowaga.

Q Did Mr. Hennessey introduce you to a GM dealer?

A Yes, Mr. Hennessey introduced me as a friend and somebody that he was doing business with to Dick Holstead of Clements-Gillogly.

Q To Dick Holstead of Clements-Gillogly Chevrolet?

A Yes.

Q Where did this take place?

A At Clements-Gillogly's place of business on Union Road.

Q Do you recall approximately when this introduction occurred?

A I believe this was in the latter part of 1967 or 1968.

Q Was there any statement by Mr. Hennessey relating to your connection with his company?

MR. KAPLAN: Objection.

THE COURT: I will allow that.

A When we met where?

Q Mr. Hennessey's statement to Mr. Holstead, what relationship you had, if any, with him.

A I was going to work with Mr. Hennessey in establishing --

THE COURT: This is Hennessey talking to Holstead?

THE WITNESS: Yes.

THE COURT: All right. What did he say?

A (Continuing) Hennessey told Mr. Holstead that I was going to be establishing leases for Econo-Car and that I would be needing particular automobiles.

Q By establishing leases, what do you mean?

A Leases have to be established like the sale of a car.

Q You are saying selling leases?

A Selling leases, right.

Q Did you in fact have any relationship with Econo-Car at that time or in the near future?

A Yes, I did.

Q Could you describe that relationship?

A That became involved in selling leases from my place of business on Broadway in Lancaster for Econo-Car.

Q Who filled the orders for these leased cars that you were selling?

A Clements-Gillogly.

Q How did this procedure take place? Could you describe it, please?

A Well, if I wanted an automobile all I had to do was call them up and tell them I wanted a car and they would write down the equipment and so forth and I would get the automobile as soon as the factory could turn it out.

Q Did you in fact place any orders for cars?

A Yes, I did.

Q For which you had established leases?

A Yes, I did.

Q Do you recall about how many leases you established, the cars for which were supplied by Clements-Gillogly?

A There was quite a number.

Q Approximately, if you can recall.

A I think that it ran over 100.

Q Were you compensated by Econo-Car for any of this?

A I was going to -- I was training Mr. Hennessey's manager, who was going to be his manager working out of my agency, to learn the leasing business.

Mr. Hennessey was going to give me a percentage of the profit of the money made by leases.

Q Did you receive any compensation?

A Yes.

Q From Econo-Car?

A Yes.

Q Were you still in the business as a Nabcor franchisee at the time that you were active on behalf of Econo-Car?

A Only to the point if --

Q Just yes or no.

A Yes.

Q Did you have any franchisees?

A Did I?

Q Did you have any franchisees?

A Yes.

Q As sub-franchisees?

A Yes.

Q How many did you have at that time?

A I had two.

Q Were they both active?

A One was semi-active and one was active.

Q Did you receive orders --

THE COURT: What were their names?

THE WITNESS: A.J. Young was my broker in Watertown.

THE COURT: Was he active?

THE WITNESS: He was active.

THE COURT: Who was semi-active?

THE WITNESS: A person by the name of Owens.

THE COURT: I thought you mentioned yesterday or Mr. Bolling mentioned a third person who was supposed to be under you?

MR. PERSON: That was Autolivery, but they weren't active.

THE COURT: Jamele was not ever under you?

MR. PERSON: No.

THE COURT: It was Owens, Young and --

MR. PERSON: You are thinking of American Auto Brokers, which was Richard Owens. He was doing business under the name of American Auto Brokers.

THE COURT: There wasn't a third?

MR. PERSON: Al Young doing business as Al Young, and Autolivery, Inc. was Novy, and that appeared in the bulletin of the BADA.

THE COURT: Thank you. Go ahead.

Q Were you selling any cars yourself as General beginning with your association with Econo-Car direct to the retail customer?

A Very few.

Q Did you sell any?

A Yes.

Q Can you give me a number, to the best of your recollection?

A Probably 10 or 15.

Q Did you obtain any orders during this same period, the Econo-Car period, from Autolivery?

A I had received one car and I believe from Nabcor for Autolivery and he ended up getting out.

Q That was in the beginning of 1968?

A Right.

Q For a customer Pemberton?

A I don't recall the customer's name.

Q Repurchased by Nabcor?

THE COURT: Do you mean he got out, the customer or Autolivery?

MR. PERSON: The car was used by the customer and resold to Nabcor, who took it back and gave it back to Rohrer Chevrolet.

THE COURT: Is that right or do you know about that?

THE WITNESS: I don't recall.

THE COURT: Is this something you will stipulate?

MR. KAPLAN: No, your Honor.

THE COURT: All right, I think the jury has to disregard that. You will cover that in the evidence?

MR. PERSON: I will try.

Q Did you receive any orders from Al Young during this period?

A Yes, I did.

Q About how many?

A I know it was over 20, possibly 30.

Q Did you have any communications with any dealers in the Buffalo area concerning supplying automobiles to General as General?

A Yes. As a representative of Econo-Car I could get any car I wanted.

2 Q Did you have any discussions with any dealers?

A Yes, I had discussions with Kaiser Cadillac, I had discussions with Dick Holstead.

Q Of Clements-Gillogly?

A Yes. I had discussions with Bain Chevrolet.

Q What was your discussion with Mr. Holstead, could you please tell us?

A About getting cars.

MR. KAPLAN: Same objection, your Honor.

THE COURT: Well, what did you tell --

MR. PERSON: He is a defendant, your Honor.

THE COURT: All right, the objection is overruled.

A I explained to Mr. Hennessey my problem of getting automobiles --

THE COURT: What was your discussion with Holstead?

A My discussion with Holstead, Mr. Hennessey introduced me to Mr. Holstead as an associate and asked that I be given the courtesy of the organization and that I would be needing automobiles. Would he see that I was taken care of, and I was.

Q You were able to obtain automobiles from Clements-Gillogly?

A Yes, I was.

Q Was there any discussion concerning any General Motors employee?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Have you been able to recall your full discussion that you had with Mr. Holstead?

A Yes.

Q Did you place orders with Clements-Gillogly for automobiles?

A Yes, I did.

Q Did you supply Mr. Young with some of these automobiles?

A Yes, I did.

Q Did you have other sources of supply in Buffalo at this time?

A Yes, I did.

Q Could you state which dealerships they were?

THE COURT: Talking about what period of

time?

MR. PERSON: The Econo-Car period.

THE COURT: What is that?

Q Would you please state what your relationship was?

A In 1968 when I started getting automobiles for orders, Kaiser Cadillac sold us cars, Bob Bain sold us cars, Ray Laks sold us cars.

Q Did you have any discussions with any persons concerning a fleet certificate?

A Yes. I had discussions with Dick Holstead about getting a fleet certificate.

Q When did that occur?

A That originally occurred -- started the original discussion on getting a fleet certificate in the latter part of 1967.

I asked him to get a fleet certificate --

MR. KAPLAN: Objection.

THE COURT: Overruled.

Q What did he state to you?

A He said he would get into the zone and see what he could do, and I also had Chuck O'Donnell of the same agency.

Q Any subsequent discussions concerning this fleet certificate that you had?

A Numerous occasions over the next year or two we talked about a fleet certificate. At different times when I was down getting cars for Econo-Car and picking up cars for myself, which I had to use a subterfuge, I had to use Econo-Car in order to get them for myself.

Q What do you mean by that?

A Well, so long as they could sell me an automobile and not get any static from anybody, they wanted to sell it and Econo-Car was an acceptable fleet buyer and therefore they could sell.

MR. KAPLAN: I move to strike the witness's testimony as to what people at Gillogly thought.

THE COURT: Well, I will deny the motion.

Q Did General have a fleet certificate?

A At the end General got a fleet rebate for, I believe -- this was in 1969 -- for $250, for something from GM as a fleet rebate.

Q But in 1967 did General --

A No.

Q -- have a fleet certificate?

A No. It was not able to obtain one.

Q Did you apply?

A Yes, I did.

Q How?

A By asking every different dealer that I went to to help get me a fleet certificate so that I could buy automobiles like Econo-Car or Hertz or Avis or anyone else.

Q Did Econo-Car have a fleet certificate?

A Sure.

MR. PERSON: No further questions.

THE COURT: Before we start the cross I want to make sure I am clear.

EXAMINATION BY
THE COURT:

Q Are you saying that when you started buying cars from Clements-Gillogly and they started filling your orders, these cars were all ordered in the name of Econo-Car?

A I don't know how they took it and wrote their orders.

Q I'm talking how you did it. Did you go and tell them "Econo-Car"?

A I would say "This is General who is working with Econo-Car. I need a particular car."

THE COURT: You would say that to whom?

A To Holstead or to O'Donnell who would write the orders also.

Q In other words, was there paperwork? Was there some written order given?

A They would write it down and I would have the specs at my dealership.

Q Was any paperwork exchanged between you on these orders? Like an order from you to them or an invoice from them to you?

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A They made out invoices like we have in evidence from cars that they sold.

Q Did you give them any written orders for these cars?

A I think there were times they were written and times they were verbal.

Q Sometimes written?

A Yes.

Q And were the written orders in the name of Econo-Car?

(Pause)

A I think, your Honor, the way Econo-Car would issue a purchase order for an automobile, if I needed an automobile I would just say "I'm getting for Econo-Car," and get it verbally.

Q There were no written orders for the cars you wanted for General, right?

A To the best of my knowledge I don't remember the actual way it worked except that they would get specs and I would get the automobile.

Q What do you mean by that?

A I would have to call them and tell them the type of equipment, color, and what I wanted, and they would tell me when the car was in, and I would go down and pick it up.

Q This was when you were trying to get the cars for General?

A This was when I was filling an order, for example, like from A. J. Young or for Econo-Car itself.

Q I didn't mean to get into 20 minutes of questioning. I want to understand clearly, and maybe it's too complicated, but do I understand that you are saying you had a dual role at this time? You were doing some work for Econo-Car and you were buying some cars to lease for Econo-Car?

A Right.

Q You were also buying cars for General to resell?

A If I had a customer to sell to, yes.

Q For the moment we'll think of Econo-Car's business and General's business. Are you with me?

A Yes.

Q When you were ordering cars for General, were there any written orders during this time or not?

A That I specifically gave to Clements-Gillogly or an order that I would write when I accepted an order?

Q I'm talking about an order to Clements-Gillogly. When you were buying for General did you ever --

A No, your Honor. I would call on the telephone and say "This is the specifications for a particular car."

Q On the telephone?

A Yes.

Q What would you say to the person you talked to?

A I would say always ask for Holstead or O'Donnell.

Q What would you say?

A I would say "This is Dale from General and I want a particular car."

Q Would you get an invoice from them?

A Yes.

Q Was the invoice addressed to Econo-Car or to General?

A It would be made out to General.

THE COURT: You may proceed, Mr. Kaplan.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Strimple, the first time you got in touch with Nabcor was by virtue of responding to a newspaper ad in July of 1967, is that right?

A That's true.

Q I show you Defendants' Exhibit S7 in evidence and I'll ask you if this is not the newspaper ad to which you responded (indicating).

(Pause)

A It looks like the ad.

MR.KAPLAN: Ladies and gentlemen, I won 't read it again. It's the same one that Bolling responded to and which I read to you when he was on the stand.

Q Subsequent to responding to that advertisement, Mr. Strimple, you met with a Mr. Nash, true?

A Yes.

Q You talked to him about buying a Nabcor franchise; is that right?

A Yes.

Q Then in July of 1967 you bought a Nabcor broker franchise, true?

A True.

Q I believe you have testified thatthe automobile you ordered for your daughter Theresa on September 21, 1967, was the first order you wrote as a

Nabcor broker; is that right?

A As far as I recollect.

Q Prior to your having taken that order from your daughter you had not run any advertising for your brokerage business, true?

A Prior to what time?

Q Prior to the time you wrote the order for your daughter's automobile.

A That was written in --

Q September 21, 1967.

THE COURT: Is that an order he wrote from the daughter to General o from General to somebody?

MR. KAPLAN: It's the purchase agreement between Mr. Strimple and his daughter dated September 21st.

Q Prior to the date on which you wrote that purchase agreement, Mr. Strimple, you had not run any advertising for your brokerage business, true?

A I don't recall.

Q Mr. Strimple, as a matter of fact your recollection not only ofthe timing but of the specifics of what happened at the end of 1967 is not too clear; is that right?

A Only specific things.

Q You don't remember the full effect of conversations that took place in that period, right?

A I'm afraid I don't.

Q You could be mistaken in part about the substance of some of those conversations, right?

A It's possible.

Q Just as you were mistaken between yesterday and today as to whether Mr. Holstead said anything about Mr. English the first time you saw him, right?

A He did speak of English at a later time.

Q Let me see if your deposition can refresh your recollection about this question of advertising, sir.

You testified as follows on June 26, 1975:

"Q Had you done anything to start your business at all prior to that order?

"A No. I was just checking financing, checking various ways in getting as much information as possible as to how to do this particular type of thing."

Another question on the same page:

"Q Prior to taking the order from your daughter had you fun any advertising for your brokerage buseiess?

"A No."

That testimony was accurate?

A At the time I gave it to you it was, to the best of my knowledge.

You don't remember anything different today?

A No.

Q You sent that order for your daughter to Nabcor around September 21, right?

A The records so indicate.

Q You dind't do that because you couldnot get that car in Buffalo, true?

A I didn't try to get that car in Buffalo.

Q In fact, you had not tried to get any other cars in Buffalo as of that date, true?

(Pause)

A That's right.

Q So between July of '67 and September 21 of '67 you had not tried to get cars or done anything else to start your brokerage business, true?

A I was getting my place ready for business and so forth. Right.

Q We have had some discussion about the place you took on Broadway and Lancaster.

MR. KAPLAN: On the theory that a picture is worth 1000 words I'll ask that the clerk mark this as

H7 for identification, a photograph.

(Defendants' Exhibit H7 was marked for identification)

Q Mr. Strimple, I show you Defendants' Exhibit H7. Lest there be any misunderstanding, it was not taken when you were there but that's the building you rented on Broadway?

A Yes.

Q It's a fair representation of that building other than the signs around which you drew circles at your deposition?

A Yes.

MR. KAPLAN: I offer it.

MR. PERSON: No objection.

THE COURT: It will be received.

Q You didn't rent this whole building, by the way, did you?

A No. I was originally renting the showroom and the car lot in front.

(Defendants' Exhibit H7 was received in evidence)

MR. KAPLAN: I'll pass this to the members of the jury.

(Pause)

THE COURT: I would suggest, Mr. Kaplan, so the record is complete, and we don't have some semantic problem, it is possible that there are two distinct types of activities although obviously related. One, attempting to go to dealers and obtain specific cars; and the second, going to dealers and obtaining commitments or indications of willingness to sell large amounts of cars in the future.

I think the record is such now that the questioner should recognize those two things as possibly being distinct.

MR. KAPLAN: Thank you, your Honor. I am conscious of the distinction but I'll ask the witness again:

Q By September 21, 1967, Mr. Strimple, when you ordered your daughter's car from Nabcor, you had not gone to dealers in Buffalo either for the purpose of ordering specific cars or to discuss a proposal for some large number of cars, true?

A True.

Q Mr. Strimple, when you first discussed taking this space on Broadway and Lancaster you discused that with a Mr. Piccione, right?

A True.

Q The initial agreement you reached with Mr. Piccione was that you would occupy that space for nothing and that he would manage the automobile sales part of your business while you sold franchises, true?

A True.

Q So you had no rent when you first started on Broadway and Lancaster, right? You didn't have any rent to pay?

A No. No rent.

Q It was not until sometime later in February of 1968 when you first signed a lease for those premises, true?

A I'm not sure. You are very, very good so I believe you have the figures.

(Laughter)

Q You don't deny it was the end of February when you first signed a lease and paid rent?

A I'm not sure if I paid rent up until then. I'm sure that that's the timean actual lease was signed.

Q Your initial agreement with Piccione contemplated that he get a share of the profits on the cars he sold for you and that he would not get any rent, right?

A Intially, but we had several agreements in this period of time between -- in fact he was actively participating, Mr. Kaplan, in working on franchising for me. He was the one that found out about the Better Business Bureau.

Q Putitng aside the Better Business Bureau, Mr. Piccione was getting a cut of whatever business he did for you instead of getting rent?

A Right.

Q I show you this lease and ask you if it refreshes your recollection as to the date on which you first signed a lease for those premises. It was February 20, 1968, true?

(Pause)

A This is after Bolling and I had merged that this lease was signed.

Q That's the first one, isn't it?

A The first written document you are talking about?

Q Well, yes.

A I'm not sure.

Q Do you know ofany others?

A I know that we had several agreements but I'm not too sure.

Q In any event, sir, on February 20, 1968, you signed a one-year lease, true?

A Right.

Q And it called for you to pay rent of $6000 a year, true?

A True.

Q That's after everybody in Buffalo would not sell to you, right?

(Pause)

A After everybody in Buffalo would not sell? No. As a matter of fact, I was at this time working with Econo-Car, some of these things in '68, I believe, and --

Q This was after all the events you have told us about where you claimed that dealers would not sell, that you signed this lease, right?

THE COURT: It's argumentative, isn't it?

MR. KAPLAN: I think not. He specified quite a bit of uncertainty.

Q You signed this lease after all these difficulties you told us about?

A I signed it in February of '68.

Q That's after the problem?

THE COURT: It's too vague. What problems?

Q It's after the instances in which you claim dealers in Buffalo refused to sell you automobiles that you have testified about in this courtroom yesterday and today, right?

A Yes. It was signed in 1968.

Q You claimed that by February of 1968 you were connected with Econo-Car; is that right?

A I became involved with Econo-Car, yes.

Q Could you be mistaken about the date you started your connection with Econo-Car?

A Could I be mistaken?

Q Yes, sir.

(Pause)

A Is it important?

(Laughter)

Q Mr. Strimple, can you only be sure of dates that someone tells you are important?

THE COURT: Let's not argue.

A You are talking back ten years ago.

THE COURT: The question is: Could you be mistaken on the date when you started with Econo-Car?

THE WITNESS: I tried to take and establish a date with Econo-Car by referring back to something that specifically happened at that time so I could try to pinpoint a date and be relatively sure that this is the time that it took place.

I became an Amway distributor sometime at that time and that's how I related it to starting a meeting with Mr. Hennessey.

Q You doh't today remember what year you started with Econo-Car?

A I can't specifically state the exact date I met Mr. Hennessey.

Q Nor can you tell us with certainty what year it was?

A 1968.

Q You are certain of that year?

A I am sure it was 1968.

MR. KAPLAN: At this time, your Honor, I would like to offer in evidence a portion of Mr. Strimple's sworn answers to interrogatories, responses to General Motors' first set of interrogatories. The answers were sworn to by him on April 1, 1972, the portion reads as follows:

Plaintiff engaged in business of leasing new automobiles, and then in response to a sub-part asking how many he leased the answer reads as follows: None.

In 1969 and 1970 plaintiff leased a number of Econo-Car vehicles; however, such leasing had no relationship to the Nabcor system or this action.

Further, I offer in evidence the following passage, starting at page 263 of the witness' deposition in this action:

"Q When did you first become connected with Econo-Car?

"A I think it was sometime around '69, '70, someplace in there."

Q Mr. Strimple, that deposition containing that testimony was submitted to you for the purpose of having you read it and make any necessary corrections, true?

A True. You notice I prefaced this with "I think that's the time." Within the last month I checked back and tried to absolutely establish the time with Mr. Hennessey, and I established it through Mr. Smith who introduced me to Amway at this particular time, and I tried to relate instances to try to pinpoint, Mr. Kaplan, time.

Q The deposition was submitted to you in September of this yearfor the purpose of having you review it and make any necessary corrections, true?

A True.

Q You read it?

A I'm sorry to say that I glanced through pages and pages, and, to the best of my recollection, felt this was evidently what I said.

Q After you glanced through a few pages you made specific corrections to a number of misstatements or errors in the transcript?

A Yes, I did.

Q And you made corrections with respect to ten different pages, right?

A Yes.

Q And you wrote out what you should have testified to or meant to testify on those ten pages?

A As I recollect, yes, I did.

Q You didn't correct the date of your association with Econo-Car?

A I didn't even think of the date until the pretrial.

T7 Q On September 23, 1976, you swore that your deposition as corrected by you was accurate?

A To the best of my knowledge at that time it was.

Q When you read it you didn't notice the date that your connection with Econo-Car started was important, right?

A That is true.

Q You found out that it was a matter of importance at the preliminary hearing in this case?

A I found out that I should definitely and correctly remember and I will not answer until I went out and researched the date.

Q And the thing that sparked you to go out and research the date is that an exhibit was offered at the preliminary hearing which showed that Clements-Gillogly Chevrolet and other dealers in Buffalo began selling cars to you in the beginning of 1968?

A That is true.

Q You needed an explanation for why and that is why you went to look up the Econo-Car, true?

A That is true.

Q After you became a broker for Nabcor, Mr. Strimple, there came a time when you started to discuss the possibility of becoming a master broker, true?

A Yes.

Q You discussed that with Mr. Bolling, I suppose?

A Yes.

Q And you discussed that with Mr. Frank Maiorana?

A Yes, I did.

Q And the two of you discussed it with him together?

A Yes.

Q I am going to show you Defendants' Exhibit WW in evidence, a looseleaf binder.

During your discussions with Mr. Maiorana he showed you that book or one like it?

A Yes.

Q He also showed you a profit projection, true?

A Yes.

Q And that profit projection said that if you bought the master broker franchise you could expect to make $900,000 to $1,000,000 in the first year, true?

A Depending on how many franchises you could sell, yes.

Q You believed that?

A I believed I could sell franchises, yes, I did.

Q You believed the other things that he showed you in that book, Defendants' Exhibit WW, true?

A Yes. These different dealers that were placing, accepting orders for cars and so forth, I took at face value.

Q He didn't tell you any of the dealers from whom there were letters in the book wouldn't sell to Nabcor, did he?

A No.

Q Specifically, he didn't tell you in the middle of 1967 that there was no longer a Don Allen Chevrolet, although there is a letter from Don Allen Chevrolet in the book?

A I don't recall that he did, no.

Q He didn't tell you that he claimed that when General Motors took over Don Allen Chevrolet they wouldn't sell him any more cars, did he?

A I learned that later.

Q But he didn't tell you that when he wanted your $25,000?

A He didn't tell me then. He did tell me, though, that there would be some of the dealers who wouldn't who wouldn't like the competition.

Q Mr. Strimple, if you will turn to page 32 of that book in front of you or, rather, page 31. If you look at the numbers in the lower corners of the page, and we will have reference to that in a minute.

Mr. Strimple, you told us yesterday that you went into Bob Bain Chevrolet some time in the end of 1967 and told Mr. Bain you wanted to place purchase orders for 200 to 400 new Chevrolets, is that right?

A Yes. You say say placed purchase orders for 200 to 400 automobiles. We are back again to the point that his Honor talked about how in terms of the written orders and orders futures.

Q You were selling futures, too?

A I was talking about supplying the Nabcor System.

Q You testified yesterday --

THE COURT: What page?

MR. KAPLAN: Page 2449, line 25, your Honor.

Q "Q Would you state, would you describe the discussions you and Mr. Bain had?

"A I went in to Mr. Bain, which I knew, and told him that I would like to issue a purchase order for between 200 and 400 new Chevrolets to supply --

"The Court: For what?

"The Witness: 200 to 400 new Chevrolets to supply the Nabcor System."

When you said yesterday that you told Mr. Bain you wanted to issue purchase orders for 200 to 400 cars, were you speaking loosely, sir?

A No.

Q Did you or did you not --

A Taking it over the period of time that we needed the cars, I was talking totally in terms of cars that I believed the Nabcor System would handle.

Q So what you really told us is that you thought you might need 200 to 400 cars and was he interested, right?

A No. I was very specific with Mr. Bain in the statement that I wish to make a commitment for this many automobiles to him and have him commit that he would supply that many cars to our system.

Q All right, you wanted to make a commitment.

200 to 400 Chevrolets at that time would have cost between a half-million and a million dollars, true?

A I would say multiplying by the purchase price that would be upwards in that respect, yes.

Q You didn't have anything resembling that amount of money, true?

A No, I did not.

Q You told Mr. Bain that Mr. Maiorana would supply a draft for that amount of money, true?

A That he would supply the draft for the automobiles, right, I did.

Q Did you believe that Mr. Maiorana had the wherewithal to do that?

A Yes, I thought Mr. Maiorana would be able to get the money for the automobiles, yes, I did.

Q One of the reasons you thought that, sir, is because at page 31 of Defendants' Exhibit WW, there appeared a Dun & Bradstreet report in which Nabcor said that it had sales of $13,000,000 a year anticipated, true?

A Yes, I thought he was quite well to do.

Q He said his net worth was $650,000 or at least gave you a document that said that, right?

A Yes.

Q So when you went to Mr. Bain you were acting in innocence of the fact that Nabcor didn't have anything like that kind of money, true?

A I didn't know the type of money they had, but I firmly believed that the sale of these automobiles that he would -- the money would be there, yes, I did.

Q Did he by any chance up to this point where you went in to see Mr. Bain tell you how many automobiles Nabcor sold?

A Well, I think that he talked far more to me in amounts of distributorships and brokerages that were being sold and I just computed what a broker would do and figured out on the car sales.

Q He didn't tell you the numbers of cars Nabcor sold up to this point, right?

A I don't recall that he did specifically.

Q How many franchises did he tell you Nabcor was selling up to the time you went to see Mr. Bain?

A He told me there were three brokerages in Buffalo and there was a master distributor in New York and one in -- two or three different other States and brokers were spreading all over, and as the franchise system would be exploding.

Q Did he tell you how many spread all over up to that point of time that you went to see Mr.

Bain?

A He said that he would certainly be able to use a couple of hundred cars.

Q Did he tell you that in 1966 Nabcor bought four cars?

A No. I didn't actually ask him about 1966.

Q He just told you a lot of rosy prospects for the future and you believed it, true?

A I believed in the system, yes, I did, and I still do.

Q Mr. Strimple, after you became a master broker for Nabcor in October, 1967, you began to run ads in the newspapers to sell franchises, right?

A Yes.

2 Q I show you Defendants' Exhibit M-7 and N-7 for identification. Will you take a look at them, please, sir? Do you recognize them?

A Yes.

Q M-7 is an ad that you wrote to place in the newspapers to sell franchises back in 1967?

A Yes.

Q And N-7 was also such an ad, right?

A Yes.

Q The first one, M-7, was to be put in newspapers if you could possibly do it, right?

MR. KAPLAN: I will withdraw the question, and at this time I offer M-7 and N-7.

MR. PERSON: Just one question, if I may.

VOIR DIRE EXAMINATION

BY MR. PERSON:

Q Is that your handwriting on the document, either N or M-7?

A No.

Q Do you know whose handwriting it is?

A No.

Q Do you know if you wrote the ad? Did you look at each, please?

A Do I know?

Q Are these your ads?

A I don't know they are my ads. I ran ads similar to this. There are lines and lines of them.

MR. PERSON: I would like to have a foundation.

MR. KAPLAN: I think I can lay the foundation.

Your Honor, if I may inquire of Mr. Person through you whether it isn't a fact that he produced these ads under the representation that they were from General Auto Sales?

MR. PERSON: I am not familiar with it. If you represent that I did --

MR. KAPLAN: I do.

MR. PERSON: No objection.

THE COURT: The witness answered that a moment ago, that these were his ads, and I will overrule any objection.

MR. KAPLAN: I offer them.

THE COURT: Received.

xx (Defendants' Exhibits M-7 and N-7 received in evidence.)

(Exhibits read to jury.)

BY MR. KAPLAN:

Q Mr. Strimple, the reason for the existence of these two ads is that some newspapers wouldn't run it if you said you could make 25 to 40 thousand dollars annually, right?

A I don't know, Mr. Kaplan, if that is true or not.

Q Mr. Strimple, General Auto Sales continued to run -dvertising to sell franchises at least into January of 1968, true?

A True.

Q You ran it all through November and December of 1967, right?

A True.

Q You were running those ads at the same time you claim that dealers in Buffalo wouldn't sell you cars?

A True.

Q That was also at the same time when you claim you were having trouble getting cars from Nabcor, true?

A I already got a car from Nabcor for my daughter which went through --

Q There were some of Mr. Bolling's orders that got --

A I was getting some cars.

Q This is the same period of time in which you had a meeting at Charter House where you told these prospects that you had no difficulty getting cars, true?

A I told them that Nabcor could supply the cars because I already had received one that I ordered, and I believed they could.

But I told them, by the way, actually I told the group that no group of dealers in a particular area is going to enjoy your competition that you are going to be given from brokers, that you can expect it.

I expected that I would get -- even when I was a dealer somebody popped up down the street giving me competition, I wouldn't like it.

Q You didn't remember that part of what you told them when his Honor asked you everything you said about the supply of cars a while ago?

A I don't remember a lot of different things specifically until I get in conversation and as I recall it, it comes back, but I am telling everything absolutely to the best of my recollection truthfully, Mr. Kaplan.

Q All right. You told these brokers in the latter part of 1967 that groups of dealers wouldn't like competition from you, right?

A Right.

Q When you went around to dealers in Buffalo looking for 200 to 400 cars, you told them you were going to ship them out of State, right?

A They would be going all over.

Q Did you tell them you were going to sell them at retail in Buffalo?

A No, I did not specifically say that.

Q Some of them found out, isn't that so, Mr. Strimple?

THE COURT: I am not clear. Mr. Kaplan asked you if you told the dealers that these cars would be shipped out of State, and you answered you told them they would be going all over.

I want to know, did you tell them that the cars would be shipped out of State?

THE WITNESS: No, not specifically like that, your Honor.

THE COURT: What did you tell them on that subject?

THE WITNESS: We were interested in drop-shipments to supply the Nabcor System, which was all over.

Q Have you ever heard of a drop-shipment from South Buffalo to North Buffalo, Mr. Strimple?

(No response.)

Q Mr. Strimple, when you went around to dealers you knew they wouldn't like it if they understood that you were going to sell cars in Buffalo, true?

A I would say that they -- well, could I answer this question just honestly?

Q I hope that this is no different from the other ones.

A I can't say exactly what takes place.

Q Go ahead, Mr. Strimple.

A I knew that the biggest competition that a dealer has is the dealer down the block, and if this dealer over here can sell cars and make money, he isn't worried about the guy over on the other side of the City or six blocks away. They are interested in selling an automobile to make a profit.

THE COURT: Are you finished?

THE WITNESS: Yes.

Q Didn't you tell the people at the Charter House the dealers wouldn't like the competition?

A I told them no dealer likes competition. Yes, I told them the only static that you would probably get is, would be the particular dealers that wouldn't like you for what you were doing.

Q When you went around to these dealers and talked to them about drop-shipping them all over the place, you knew what if you specifically said that you were going to sell the cars at retail in Buffalo, at least some of them weren't going to sell to you, true?

A Mr. Kaplan, I didn't want to elaborate to that dealer the whole text of why I was trying to sell a car in numbers, this sort of thing.

All I asked is if he wanted to sell cars, this amount of numbers for this type of money.

Q You didn't tell them that you were going to resell them in Buffalo at retail, right?

A I did not take and give them any more conversation than was necessary.

Q On this first occasion when you went in to Laks Chevrolet or whatever the dealership was, the Laks dealership, you didn't tell them that you were going to sell these cars in Buffalo, just like you didn't tell the rest, right?

A I just told him to supply the Nabcor System.

They already had known what the broker system because they were members of the Buffalo Automobile Dealers Association.

Q That is an assumption on your part, right, Mr. Strimple?

A No, it was in the records of the BADA.

Q Well, you say that after this first episode with Laks you went back a second time and they said they wouldn't sell, right?

A That is correct.

Q Isn't it a fact that when you went back the second time you were told they wouldn't sell because they didn't want the competition?

A No, as a matter of fact, they said they wanted to take and get it cleared with the zone. It is possible one of the boys said they didn't want the competition.

MR. KAPLAN: I offer in evidence, your Honor, Paragraph 14-D of Mr. Strimple's or General Auto Sales' answers to interrogatories to which Mr. Strimple swore on November 8, 1972.

I guess I have to read the question before I read the answer.

3 Q "Q Do you claim that you were unable to purchase new automobiles from franchised dealers as a result of any violations of law charged in the complaint and if so:

"(a) State the date of each such instance:

"(b) Identify the franchised dealer from whom you were unable to purchase; and, in each such instance,

"(c) Identify each communication relating to each such instance, and if any such communication was oral, identify each person present when it was made."

Mr. Strimple's answer, Paragraph 14-D, reads as follows:

"In the latter part of October, 1967, Strimple spoke to Edward Laks of Laks Chevrolet of

Buffalo, New York, and to Ray Laks about buying Chevrolets and Buicks.

"They said they wanted to check with the Buffalo zone before giving an absolute commitment. On the following day Edward Laks told Strimple he was not interested in selling to Nabcor because it would be in competition with him."

MR. KAPLAN: Your Honor, this would be a convenient breaking point, as I am going on to something else.

THE COURT: All right, 2.15.

(Luncheon recess to 2.15 p.m.)

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AFTERNOON SESSION
2:30 p.m.

(In open court; jury present)

DALE STRIMPLE resumed.

CROSS-EXAMINATION CONTINUED

BY MR. KAPLAN:

Q This morning you said that you contacted Jack Stevens Buick and on that occasion whoever you spoke with pulled out the Buffalo Dealers Association Bulletin. Is that true?

A He referred to the bulletin.

Q You didn't go to Jack Stevens Buick personally on that occasion, did you?

(Pause)

A I was down at the dealership.

Q Did you also contact them on an occasion by telephone about buying cars?

A I believe I did.

Q On the occasion when you went out to the dealership, with whom did you speak?

A I spoke to the new car manager, but I can't remember his name.

Q Robert Jackson?

A Thank you for refreshing me.

Q When you went out to the dealership and spoke to Robert Jackson, was that about Nabcor or General Auto Sales?

A I was also out to the dealership at the same time on the Econo-Car business.

Q Did you have a talk with Robert Jackson at Jack Stevens Buick on the premises about Nabcor or General Auto Sales?

A I don't recall if it was at the dealership or on the telephone at the time when I spoke to him about buying Buicks for brokers.

Q Did you speak to him once or more than once about getting cars for General or Nabcor?

A I think it was once, with Stevens.

Q Was it in the same conversation in which you claim he referred to the bulletin?

A I believe it was.

Q So there was only one conversation with this fellow Jackson about Nabcor, and that was the same conversation where you claim he referred to the bulletin, is that right?

A That's right.

THE COURT: I would like the last three questions and answers read back.

(Record read)

THE COURT: The reason I asked it to be read was because I think he said that he used the name Stevens with respect to the telephone.

Read it again.

(Record read)

Q You didn't speak to anyone at all at Jack Stevens Buick other than Mr. Jackson, true?

A I didn't speak to anybody --

Q Other than Robert Jackson, true?

A That's correct.

Q And that reference in the testimony where you referred to Stevens referred to the dealership?

A Right.

Q So there was one conversation you had with Mr. Jackson in which you talked about cars for General Auto Sales and in which he referred to the bulletin, true?

A Right.

Q And there was some other conversation at another time which had to do with Econo-Car?

A Right.

Q The conversastion that had to do with Nabcor, did that take place out at the premises of Jack Stevens

Buick or on the phone?

A I believe it took place at the dealership because -- I'm not sure.

Q It could have been on the phone?

A All I know is that the conversation took place.

Q You don't remember physically being present on the occasion of that conversation, right?

A No.

Q And therefore you don't remember seeing Mr. Jackson pull out the bulletin either, true?

A He referred to a "rash of brokers."

Q He used the phrase "rash of brokers" when you talked to him about Nabcor, true?

A Yes.

Q And you jumped to the conclusion that that was the same phrase that appearsd in the bulletin, true?

A That's possible.

Q You don't know whether he had the bulletin or not, true?

A I didn't see the bulletin, no.

Q Mr. Strimple, I think either late yesterday or this morning we had some discussion about bird dogs that you put on when you became a Nabcor broker. Bird dogs are people who refer prospects to you; is that right?

A Yes.

Q Did you pay them a salary?

A They can be paid -- they're paid on several different types of arrangements. Quite often it's paid on an individual referral that turns into a sale.

Q What was the arrangement you had with your bird dogs?

A Piccione was going to be paid on a percentage of profits generated from sales of both automobiles and franchises.

THE COURT: You referred in the last answer to Piccione, right?

THE WITNESS: Right.

Harold Deal was paid on a salary basis.

Q Who was Harold Deal?

A He was one of the bird dogs. He was also working getting leases.

Q Harold Deal was the man that Mr. Hennessey sent down for you to train for Econo-Car?

A Yes.

Q It was Econo-Car that paid his salary, right?

A No.

Q You paid it?

A I paid it. They paid me and I paid them.

Q What about your other bird dogs? What was the financial arrangement with them?

A George DeGaulle was paid on a per sale basis.

Q Are we clear that we are talking about bird dogs for car sales or are you including bird dogs for franchise sales?

A Both.

Q Were all of these prople doing both for you?

A The people that I was talking to to a great extent in setting up bird dogs were also people who were experienced in automobile sales and totally could see hwo the system would be of benefit to them.

THE COURT: We have to make some progress and some things have to be cleared.

Did you request anybody to do bifd dogging for you for car prospects?

THE WITNESS: Specifically car prospects?

THE COURT: Yes.

THE WITNESS: No. I specifically set them up to do both.

THE COURT: I didn't ask the question right.

In other words, you asked certain people to do bird dogging for prospects for cars and for franchises; is that right?

THE WITNESS: Right.

THE COURT: You didn't just have certain people solely for cars and certain people solely for franchises?

THE WITNESS: No.

THE COURT: Go ahead, Mr. Kaplan.

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Q Whatever bird dogs you had at any time were doing both franchises and cars, right?

A Right.

Q Before you got the master broker franchise you weren't selling franchises, right?

A That is true.

Q So any bird dogs you had around that period of time were just bird-dogging cars, true?

THE COURT: I don't know what that means. Did he have them or didn't he?

MR. KAPLAN: He testified yesterday that he did.

THE COURT: Now, you say you had bird dogs before General was formed? I thought he said this morning, the early part of your cross, that he did not do anything before a certain point except get the orders in order. So it is not clear to me.

MR. KAPLAN: He said that, too, your Honor.

A Mr. Picone, if I can clarify the situation, we had the building. When I was talking to him about renting the building as a facility I also set him up to do business in the automobiles that we were talking about. It wasn't -- just at the same period of time. I mean, he was right there and he was in the business.

Q That was after October, wasn't it, Mr. Strimple, or during October?

A That was the time that the master brokerage was formed, but the brokerage itself, selling all types and makes of automobiles, occurred in July of that year.

THE COURT: The question in my mind, and I would like to get the picture if I can, the question in my mind is this:

Before the date arrived when you were doing business as a master broker, had you retained or requested anybody to act as a bird dog, whether it was Picone or anybody else?

THE WITNESS: Yes.

THE COURT: When? In other words, while you were still just a mere broker and not a master broker, you had --

THE WITNESS: Right.

THE COURT: You had one or more bird dogs?

THE WITNESS: Right.

THE COURT: Were they going around and asking -- were they to refer car prospects and possibly franchise prospects or just one or the other?

THE WITNESS: Do both. In fact,at one time or another they were actually instrumental in putting me into contact with both types of prospects.

THE COURT: Are you saying that from the first time that you used bird dogs, whenever that was, they were supposed to refer both car prospects and franchise prospects, is that right?

THE WITNESS: We told them what we were doing and to keep their eyes and ears open, yes.

BY MR. KAPLAN:

Q Mr. Strimple, before October 6, 1967, you were not trying to sell franchises, you were only a broker, true?

A No, we were thinking of sub-brokers.

Q You were thinking of sub-brokers? Is that something different than selling other franchises?

A Yes, you could have a broker, a sub-broker under a brokerage.

Q That is different from selling Nabcor franchises?

A Yes, they don't have the responsibility or specific quotas and that sort of thing.

Q Mr. Strimple, it is nevertheless true that before September 21, the time when you ordered your daughter's car, you didn't do anything to forward this business, right?

THE COURT: He already described that.

A I hadn't gotten any amount of car orders, if that is what you are referring to. I had people talking about becoming brokers.

Q Mr. Strimple, you could be mistaken about the timing of this arrangement with Picone, too?

A That is possible.

Q What time?

A Almost from the time I took the brokerage.

Q It could have been as late as November, Mr. Strimple?

A No, it was in the Summertime, warm weather.

Q Do you recognize this handwriting?

A Yes.

Q Whose is it?

A That is mine.

MR. KAPLAN: May we have this marked for identification as Defendants' Exhibit Z-8?

THE WITNESS: Mr. Kaplan, that is when --

THE COURT: Wait a minute, why don't you wait for him to ask a question?

Q Mr. Strimple, this Defendants' Exhibit Z-8 is a draft of a contract or agreement you arrived at with Mr. Picone that you wrote out for your secretary to type, true?

A That was written by hand stating the text of what we were doing.

MR. KAPLAN: I offer it, your Honor.

THE COURT: Any objection?

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibit Z-9 received in evidence.)

MR. KAPLAN: I would like to read this, ladies and gentlemen, because it is kind of illegible or partially illegible.

(Exhibit read.)

MR. KAPLAN: That clearly is not in their handwriting, thenames, but the secretary, is that right?

MR. PERSON: Yes, I think so.

Q Mr. Strimple, that is about when you got into the Broadway premises in Lancaster, isn't it, in November?

A No. If you will notice, Mr. Kaplan, that is all the facilities for a whole year and the original agreement we had was only for the showroom. This stipulates we got the whole building.

Q Mr. Strimple, wasn't there a subsequent agreement that was here this morning?

A That was later on.

Q First you had just the showroom and leased the whole place and then just the showroom, is that your testimony?

A Circumstances changed in the time for different agreements.

Q Mr. Strimple, while you were a Nabcor broker and before you became a master broker did you have any salaried employees?

A Will you repeat the question?

(Question read.)

A No, I did not.

Q After you became a master broker, did General Auto Sales have any salaried employees?

A We have employees, I don't know whether they were salaried or not.

Q Who were the employees?

A Harold Deal.

Q Are you referring now to the bird dogs as employees?

A No.

Q Anybody besides Harold Deal?

A Sidney Meyer, who was a secretary; Don Bolling; myself, and at that period of time we had a fellow by the name of Richard Clark, who was paid a draw.

Q He was paid that draw for no more than four weeks?

A It was $200 a week.

Q For no more than four weeks?

A I'm not sure of the length of time. I don't know Mr. Kaplan. I don't remember the exact time.

Q You don't have any payroll records for this business, do you?

A It was very convenient that all my records were stolen.

Q Your records of car owners were stolen?

A I had just total records, and it was turned over to the police and it's on the police record and everything.

Q Mr. Strimple, you didn't turn your recorys over to the police, didyou?

A I turned -- I had the police in to investigate the theft and reported what was taken.

Q At the time that these records were taken you were under investigation on tax matters, true?

A Not that I can recall, but it is possible. I was having my personal income tax checked at one particular point.

Q At about the time your records disappeared you told Mr. Bolling you were under investigation by the tax authorities, true?

A I think the records were stolen in '69, Mr. Kaplan, and I think Bolling's was in 1968.

Q Bolling's what?

A Testimony as to records.

Q Do you deny at about the time you told Bolling your records were stolen you also told him you were being investigated on tax matters?

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A I don't recall.

Q You don't deny that that is so, do you?

A I neither confirm nor deny it. I don't remember it.

Q As a matter of fact, all your records were not stolen, just the car owners and the payroll book, true?

A The records that had to do with this investigation were taken.

Q What do you mean by "this investigation"?

A As I said, I was involved at this particular time of going to the Justice Department and asking for an investigation into antitrust, what was happening totally to me in the automobile business. The records from the BADA, the different financial institutions, every place that I turned I was stopped cold, and I asked for and received help from the Justice Department.

THE COURT: The question was whether there were some records that were stolen and some records that were not.

THE WITNESS: They took practically all the records that substantiated anything, your Honor.

THE COURT: Why don't you pursue this.

Mr. Kaplan will ask you questions and you

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listen carefully and limit your answers to those questions so we can make progress. Get something answered and we'll proceed.

What is your question?

Q In particular, Mr. Strimple, the records pertaining to the advertising you ran were not stolen, true?

A I don't recall. Advertising is a continual thing.

THE COURT: I don't think we have fixed when this occurred, when yousay the records were stolen. What time was it?

THE WITNESS: Mr. Kaplan, could you tell me when the records were stolen?

MR. KAPLAN: I wish I could, Mr. Strimple.

THE COURT: Seriously, when was this occurrence that you say?

THE WITNESS: I think it was in '69, your Honor.

THE COURT: Where were your records then?

THE WITNESS: In the office.

THE COURT: Is this the office on Broadway?

THE WITNESS: Yes.

THE COURT: You say they were stolen out of that office?

THE WITNESS: Yes.

THE COURT: You may proceed.

Q Mr. Bolling left the Buffalo area sometime in 1968, true?

A True.

Q You told him about the break-in?

A Yes. I stopped over at this Dodge dealer one night and was talking about what was taking place.

Q That was before he went to whereever he went to from Buffalo?

A That was before he went to Florida.

Q He left Buffalo in '68 and you say the break-in was in '69; is that right?

A He didn't leave Buffalo in '68. He had a dealership in '69, I believe.

Q Let's go on.

You have in front of you Exhibits O7, Q7, P7 and R7. These are records of the advertising you ran while you were a master broker, true?

(Pause)

A It's not all ofit.

Q It's all that you have turned over to us in this case?

A We had the Buffalo Evening News and other papers that are not on here.

Q There were some others?

A This is some of the ads that were run.

MR. KAPLAN: I offer the exhibits, your Honor.

VOIR DIRE EXAMINATION

BY MR. PERSON:

Q These are your records?

A These are not all the records. These are a very few of the ads that were run.

MR. PERSON: No objection.

(Defendants' Exhibits O7, P7, Q7 and R7 were received in evidence)

x

MR. KAPLAN: We will summarize these in a table later on, but the records on these four exhibits cover a period from sometime in November to January of 1968.

Q Mr. Strimple, do you remember how many people expressed interest in buying a franchise from General Auto Sales?

A I would say that there was probably in the neighborhood between 50 and 60 at the time.

Q And General Auto Sales followed up all those expressions of interest?

A We followed up until the time that I went into the Justice Department and then just stopped totally.

MR. KAPLAN: Mr. Person, would you stipulate that Mr. Strimple went to the United States Attorney on February 1, 1968?

MR. PERSON: Yes. We have a letter to prove that.

Q After February 1, 1968, you made no effort to sell franchises any more, true?

A I was waiting for the Justice Department to clarify what was taking place. That's true.

Q It is also true, is it not, that no dealer in Buffalo ever refused to sell you a car after February 1, 1968?

(Pause)

A As I said, I didn't advertise any further --

Q The question has nothing to do with that.

A I did not get refused, no, after the Justice Department met and the whole thing.

Q You mean you didn't get refused after you went to the United States Attorney, true?

A That's right.

Q And that was February 1 of '68?

A That was in '68.

Q You made reference this morning to a grand jury investigation?

A True.

Q That didn't happen until at least March of 1969, true?

A That was when they actually convened. But theinvestigation had been doing on for a year.

Q Did you do the investigation?

A No, but I heard about it.

Q You heard about it?

A Yes.

Q You don't know to your own personal knowledge what if anything the Justice Department did between February 1, 1968 and sometime in 1969, true?

A Personally, no.

MR. KAPLAN: Your Honor, I would like to offer two paragraphs at this time from a request for admissions, paragraphs 8 and 9 of General Motors request No. 5 for admissions of fact which the plaintiffs have admitted.

Paragraph 8 reads as follows: No grand jury was impaneled in the United States District Court for the Western District of New York, which is Buffalo, to investigate any matters relating to, or allegations by, Nabcor, General Auto Sales, Multi-Make Auto Sales, Dale Strimple and Donald Bolling, or any of them, on or before March 5, 1969.

Paragraph 9: No witness was subpoenaed or requested to testify before any grand jury investigating any matters relating to allegations by Nabcor, General Auto Sales, Multi-Make Auto Sales, Dale Strimple and Don Bolling, or any of them on or before March 5, 1969.

Q The dealers in Buffalo started to sell you at least a year before any grand jury investigation, true?

A As I said, after I had taken and operated as arepresentative for Econo-Car I had no problem getting cars.

Q Mr. Strimple, it was at least a year after the dealers started to sell to you that there was a grand jury investigation for the first time, true?

A I don't know for sure.

Q Yet you didn't make any effort after February of 1968 to sell franchises, true?

A I would not make an effort to sell a franchise until I was sure I had a source of supply. One, two or 20 cars, Mr. Kaplan, was not the amount of cars I was talking about to sell mass distribution. There was absolutely virtually nothing, a few cars.

Q You were in business from February of '68 and before until July 1970 as General Auto Sales, true?

A Yes.

Q And over that entire period no dealer in Buffalo refused to sell to you, true?

A That is true.

Q And over that entire period you made no effort whatsoever to sell a single franchise, true?

A I told you the reason. That's right. If they could cut my car supply off by snapping their fingers, as they did originally, why would I take and go further with it?

Q Were you working at this General Auto Sales and Nabcor business full time?

A What's your definition of "full time," Mr. Kaplan?

Q Did you regard it as a full time occupation?

A No. I had other means of endeavors to earn enough money to keep myself going until I thought that the grand jury would break this thing open and I could go full time into franchises.

Q Mr. Strimple, in fact you were connected with something called Paragon Homes, true?

A I was associated with Paragon Homes, yes.

Q You were with them for over a year, true?

A Off and on, yes.

Q That was around 1967 and 1968, true?

A I don't recall the exact time.

T4 Q I will read from your deposition, page 252, referring to Paragon Homes:

"Q To the best of your recollection, that was in 1967 and 1968, is that right?

"A Somewhere in that vicinity."

Now, sir, your work in Paragon Homes was to sell real estate,true?

A No, it was to sell pre-cut homes.

Q Selling what you call pre-cut homes you spent at least 20 hours a week working on that, true?

A Well, mostly on Sundays and evenings.

Q You also worked for something called Gulf American Corporation during part of 1967, true?

A That was Sunday afternoons.

Q You worked for them up until September 23, 1967, two months after you bought a Nabcor franchise?

A I worked seven days a week.

Q You worked for them until September 23rd, right?

I show you this and see if it refreshes your recollection.

A What is the period here? Is it 9/23/70?

Q 1967. That was attached to your 1967 tax return and does that help you on what year it was?

A Yes.

Q You worked for them until September 23, 1967, right?

I didn't hear an answer, Mr. Strimple.

A Yes. I put in a few hours a week with them.

Q As a matter of fact, you put in about 15 hours a week for them, true?

A Mostly, as I said, on Saturdays and Sundays.

Q What did you do for Gulf American, was that to sell home sites in Florida, true?

A That is true.

Q You used to hold dinner parties where you gave free dinners to prospects in Buffalo and tried to sell them home sites in Florida,right?

A That is true. They were an excellent source of brokers, too.

Q You continued to do that at least two months after you were a Nabcor broker, right?

A Because I was, like I say, in with the people.

Q Then, Mr. Strimple, somewhere in 1968 or 1969 you became an Amway distributor, true?

A More people.

Q You became an Amway distributor?

A Yes.

Q As an Amway distributor what you did was sell more Amway distributorships to other people, right?

A No, I didn't sell them.

Q You tried?

A No, Amway distributors don't cost anything.

Q You were giving them away for nothing?

A That's right.

Q And the come-on was that if you got an Amway distributor and induced someone else to sell some products, you got an override?

A Not exactly, your concept is wrong of Amway.

Q Why don't you tell us?

A An Amway distributor does not go by distributorships. He takes and becomes a salesman for 167 products. It is much like an Avon representative, this sort of thing, where products are sold in the home, and if you reach a certain volume the distributor who trains you and sets you up in business and supplies your products can receive a couple of hundred dollars if you reach $7500 in sales.

Q The only thing you did was to distribute distributorships, right?

A No. In fact, we sold Amway products at the automobile agency. We had products there.

Q If someone went in to buy an automobile you had some Amway soap, true?

A Not really.

Q Not really? What were the products?

A In other words,Mr. Kaplan, I was trying very, very hard to get a few dollars until this thing with the Justice Department broke off and I could go into the regular business of which I am very, very serious about.

Q You were selling pre-cut homes, right?

A Yes.

Q Home sites in Florida?

A Yes.

Q Amway distributorships?

A I wasn't selling them.

Q Reading from your deposition at page 259:

"Q During this period when you were acting as an Amway distributor for Amway, how long were you actively doing that?

"A Several months."

A I think that was a misinterpretation.

Q All right. You weren't selling, you were --

THE COURT: When was that, 1968 or 1969 or when?

Q It was both, Mr. Strimple, right?

A I think it was in 1968, and Gulf American was in 1967.

THE COURT: Your activity for Amway, did it go into 1969?

THE WITNESS: I am still an Amway distributor.

Q In any event, you devoted several nights a week to the Amway business, true?

A Mr. Kaplan, when you say devote to Amway business, any time that I was associated with people, people who drive automobiles, people who are interested in becoming distributors and so forth, I am taking and conducting my business.

A broker does not have to be at a particular place conducting business. He has to be out among the people, and that is where I was.

Q You spent several nights a week out among the people trying to get people to be Amway distributors?

A Whatever it was that was conducive to the business, yes.

Q All this period when you were working as Nabcor, at least when you were on Broadway and Lancaster, you ran a used car business, true?

A At the dealership.

Q And in 1968 you sold leases for Econo-Car, right?

A I worked selling leases, yes.

Q You made a lot of reference, Mr. Strimple, to this grand jury investigation.

It is a fact, is it not, nobody was indicted by this grand jury?

A As I understand --

Q Yes or no.

A I don't know.

Q As far as you know, it didn't happen?

A As far as I know, it got buried under the I T & T and Nixon Administration.

(Laughter.)

Q We talked a little bit this morning about Laks Chevrolet or Buick or whatever.

You said you went in there with some orders. Did you give written orders to Mr. Laks when you were in there?

A I don't know whether I gave them written orders or verbal orders. All I know is that I gave them specific specifications for particular cars.

Q Mr. Strimple, the fact is that you and Mr.

Bolling at that time when you went around talking about 200 of 400 cars, had these five or so orders, right?

A What?

Q You had these five or so orders for specific cars, right?

A Yes, we did.

Q And what you did is to go in and ask if somebody would be interested in selling you two or four hundred cars, true?

A Yes. If they would like to be the source of supply.

Q And you told them you had the four or five or six or whatever number of specific orders, true?

A Immediate orders, yes.

Q And told them if they agreed to give you two or four hundred cars, you would place those orders, right?

A We told them we were looking for a very large source of supply, yes.

Q You made it clear that nobody was going to get those five orders unless they agreed to be a very large source of supply, right?

A I don't recall that is the way it was.

Q It could have been that way?

A It is possible.

2 Q Nobody agreed to become the very large source of supply in the Fall of 1967?

A They all agreed they wanted to become the source of supply originally, Mr. Kaplan.

Q None of them --

A Virtually everyone that I talked to was very, very interested in becoming the source of supply. But a short time later they weren't.

Q So you never gave any of them these orders, you sent them to Nabcor, true?

A I think Nabcor had specifications on automobiles at this time that we were looking for but they were also experiencing difficulty --

MR. KAPLAN: I move to strike.

THE COURT: It is stricken. You listen very closely to the question.

The question is, and I want you to listen very closely. Mr. Kaplan is asking you if it is not true that since the dealers would not agree to sell the mass amount of cars, the 200 or 400, you did not then, since they would not so agree, you did not then give the five orders to any of them, but you sent the five orders to Nabcor? Do you understand the question? If you don't understand the question, Mr. Kaplan can rephrase it or break it down.

THE WITNESS: Would you rephrase it?

Q You took these five orders around to dealers whom you spoke about the two or four hundred new cars to, right?

A Yes.

Q When none of them would give you the 200 or 400 cars you sent the orders to Nqbcor, right?

A Yes.

Q You never gave those specific orders to any of the dealers, right?

A Ultimately -- let me look at this F-7, is that right?

Q You have learned a great deal over the last six years, Mr. Strimple.

THE COURT: Let's go back aquestion or two and just read that.

(Record read.)

THE COURT: What is the answer?

A I gave the specific orders for some of these cars to Kem-Dengler, for one example. There was actual specifications for the cars.

THE COURT: What Mr. Kaplan is asking --

THE WITNESS: In the end I gave those to Nabcor.

THE COURT: But he is asking and you listen very closely and if I am asking it wrong Mr. Kaplan can correct me, but I want to make some headway here.

He is asking a very specific question: did you, if you discussed these five orders with Kem-Dengler or these other people, was it conditioned on them giving you or agreeing to the 200 or 400?

THE WITNESS: No.

THE COURT: In other words, you submitted the orders unconditionally to Kem-Dengler?

THE WITNESS: Right.

THE COURT: He could have had the orders whether he sold the 200 or 400 or not?

THE WITNESS: Right.

THE COURT: That is Mr. Kaplan's question. What is the answer?

THE WITNESS: It was not they didn't get these unless they agreed to sell the 400.

BY MR. KAPLAN:

Q You weren't using these as evidence of your good faith in talking about the 200 or 400, true?

A Yes, I was showing them that orders existed for cars and here they are.

THE COURT: Now, look, who did you go to first in this?

THE WITNESS: There was Kem-Dengler --

THE COURT: Who did you go to first?

THE WITNESS: The first was either Holstead at Hamister-Gillogly or Kem-Dengler.

Originally this was because Mr. Bolling was associated with both places and knew them, so it was the natural place to go.

I don't remember this date did I run to this dealership or that one. That was all in this period of time.

THE COURT: Let's suppose, for instance, that you went to Kem-Dengler first, although you don't remember. Let's suppose, you had to go to somebody first.

THE WITNESS: All right.

THE COURT: If they had taken the five orders but turned you down on the 200 to 400, then you presumably would have gone to somebody for the 200 or 400?

THE WITNESS: But we also went into the fact of more on retail.

THE COURT: What would you have done in your second call about the 200 to 400? You were not going to have the five orders to show the second fellow?

THE WITNESS: No, because we would have taken and went after more orders and we would also have been able to show our prospective brokers that these cars existed and they could place an order and get a car.

We had to start some place to get somebody so we could show they existed this way.

BY MR. KAPLAN:

Q You and Mr. Bolling never discussed among yourselves these five orders or so were a good-faith token for the dealer?

A Not that I recall, no.

Q You never discussed among yourselves --

A I was interested in just geting somebody to take the orders, try to get us a continual source of supply so we have some cars that I could show existed to people that we were talking about as brokers.

In fact, we called Mr. Maiorana and said, "Plese, get us a Cadillac, get us some of these cars so we can show these people they are existing"because we had people that are interested in buying.

Q We had some testimony about Paul Batt Buick. You said that you were informed when you went to get this Electra that it had been taken back by the factory or zone, right?

A When I went to pick it up, yes.

Q You were also told on that occasion that it was taken back because there was a malfunction, true?

A Yes.

Q You were an automobile dealer at that time, right, had been in the automobile business?

A Yes.

Q Did you know the National Highway Traffic & Safety Act provided that a manufacturer had to repurchase cars when they didn't meet the Federal Safety standards?

A I hadn't heard of that particular Act, Mr. Kaplan.

Q You never yourself talked with Mr. Womack, true?

A No, I did not talk to him. I tried to talk to him.

Q There has been testimony in this case about cars being traced by Chevrolet that were delivered in the Buffalo area to determine where the dealer was selling the cars.

You don't have any information to the effect that General Motors ever traced the serial number of any cars sold to you or Nabcor for any reason, true?

A The information that I got was what Mr. Maiorana told me was happening to him in Philadelphia as a result of a car they got in Buffalo.

Q You don't know anything about it other than what Mr. Maiorana told you?

A That is true.

Q Dave Hallman Chevrolet you said originally they would sell to you at $150 over invoice?

A Yes.

Q And then said $250 over, true?

A True.

Q They never refused to sell to you, true?

A True.

Q You didn't want to pay $250 over?

A I didn't want to pay $250, no.

Q In your period of time as an automobile dealer, Mr. Strimple, did you ever have a customer come in and quote him a price and have him say he didn't want to pay it?

A Yes.

Q Happens all the time?

A Very common.

Q Mr. Strimple, you have testified today and yesterday about four Chevrolet dealers in Buffalo who wouldn't sell you, Bob Bain Chevrolet, Ken-Dengler Chevrolet, Glenn Campbell Chevrolet and Dave Hallman Chevrolet.

All of the contacts you had with those dealers in which you claim they wouldn't sell you all had to do with this proposition for 200 or 400 cars, true?

A They were talking about substantial numbers.

Q Those were the numbers, right?

A Yes, but they liked the numbers.

Q But those were the numbers, right?

A Those were the numbers.

Q It is true at Gillogly also, wasn't it, 200 to 400 cars?

A Right, but I think some of the dealers sell this many to Hertz and Avis and Econo-Car and that. I mean, it is not exceptional for big leasing companies or users to buy that amount of cars.

3 Q General Auto Sales was not a big leasing company or user, was it?

A It was attempting to be.

Q It is not even a little leasing company or user, right?

A Not at its inception.

Q Not when you went around to the dealers about the 200 or 400 cars?

A How did they know?

Q Mr. Strimple, you had in General Auto sales & Leasing at the time you went around with the 200 or 400 cars, not a single vehicle registered in the name of General Auto Sales, true?

A That is true.

Q You had never leased a single vehicle to anybody, true?

A That is true.

Q You heard about the R.L. Polk listing, true?

A I have heard about it?

Q Right.

A I am not sure.

Q You are not sure? It is stipulated, anyway.

A part from these conversations about the 200 ro 400 cars, which, by the way, Mr. Strimple, took place right at the start of the 1968 model year, didn't they?

A When did we get our first car in 1968?

Q You have the chart right in front of you.

A I don't have it.

MR. PERSON:. The Pontiac was January 23 and the Chevrolet February 26, the Vosseler Chevrolet.

THE COURT: What was the source of this? I have Exhibit E, which has the first sale, is it, Paul Batt Buick delivered in February, 1968?

MR. PERSON: Local suppliers, your Honor. It was in the Econo-Car period --

MR. KAPLAN: I dispute Mr. Person's statement.

THE COURT: He is not a witness and I don't know what --

MR. PERSON: That is the heading of it, your Honor. It states that it is local suppliers.

MR. KAPLAN: These are the cars he bought in Buffalo.

THE COURT: I see. What is the question?

Q Is it not a fact that the time you went around to these dealers about the 200 or 400 cars it was the start of the 1968 model year?

A Yes, I went around to the dealers in late 1967.

Q And the new cars were just coming out, right?

A The new cars -- I don't know the exact time that the '68s were introduced that year. They generally come out in Septemb er and October.

Q You know from your days as a Rambler dealer that cars are sometimes scarce at the start of the model year?

A Yes.

Q You wanted 200 to 400 cars at cut-rate prices right at the start of the model year; is that right?

A I was not talking interms of the dealers that they would have to deliver me 200 cars, like have them parked out in front today. I was talking to them in terms of over the period of their model run that I would have between 200 and 400 car purchases for them. I was not stockpiling 200 to 400 cars at one time.

Q But apart from the approaches of 200 to 400 cars, nobody in Buffalo refused to sell to you, right?

A Not after I become associated in --

Q Answer the question, Mr. Strimple: Yes or no.

MR. PERSON: I think he has answered that already, your Honor. It's getting argumentative.

THE COURT: I think I rather agree. It seems to me that --

THE WITNESS: May I say it the way it is?

THE COURT: The record says repeatedly the refusals occurred in the conversations inthe fall of 1967 when he says he was requesting the 200 to 400 cars, and he also says he submitted at least on some occasions the five-car order, and those were the only refusals to sell that I think he has testified about, and I think that has been said several times, so I think we should go on.

I think we'll take a recess now.

I'll speak to the lawyers.

(Jury out)

THE COURT: What I would like to ask you about: Where is the tabulation that we talked about Friday? How is that coming along?

MR. PERSON: I have a lot of mine completed, your Honor. I should be able to finish it up by tonight.

THE COURT: What about the General Motors tabulation?

MR. KLEINBARD: We have also made extensive progress. I would like to review it.

THE COURT: When do we get it? I thought we would have it today.

MR. KLEINBARD: Your Honor, in the first place, I would like to see it. I think it was worked on until 4 o'clock this morning. I was in court, as you know.

In the second place, I would like to have Mr. Person's witnesses' testimony completed before we at least go forward with out tabulation. I think the burden is on Mr. Person to show what happened to his cars, and my client has very strong objection to our going forward in the absence of Mr. Person's producing his evidence. The burden is on him.

THE COURT: This is not a matter of burden of proof. I just completely overrule any such objection, and you can so advise your client. That is all there is to it.

I was told last Friday that the matter was being worked on and there was not any strategy indicated to me. I will not put up with any of that. These are facts that should be documented, and, to the extent there is no evidence there will be a big blank shown. These are matters which the plaintiffs are responsible, as far as I am concerned, for supplying the evidence about, but if there is no evidence about a particular item there is not evidence. It will be a blank. At least I want to know that.

It seems to me that we go on and on about conversations with dealers, and I return to what I said numerous times last week, and that is that the very heart of this case is the solid facts about the auto transactions. I expect to have that.

I tried to get you to indicate some simplified form it was in and Mr. Kaplan said "Don't bother with a simplified form," that he would go forward and the computer materials were going back and forth, and so forth.

MR. KLEINBARD: All of that is true.

THE COURT: That should be in. It's not a matter of waiting for the completion of any witness at all. I would like to see it. I think there undoubtedly will be work to be done with that, but we have to get it and see what can be done with it and what it means.

I think that Mr. Person should have it. I should have it. I think the indications are that your materials will be far more complete than what is being worked up by Mr. Person. Mr. Person doesn't even undertake to do anythinb but to try to get the tabulation of what he calls the refusals to deal.

As I said, that is not enough.

MR. KLEINBARD: I understand that. I'm not trying to play games either with Mr. Person or with the Court. I am under an obligation to look at this material before it is furnished to your Honor. As I said earlier, they were at this until 4 in the morning and I will not be able to see it until I get back to the office tonight.

At the same time, I do repeat, if Mr. Person is going to produce anything I think we're entitled to see that and to see it as early as possible and not just have us produce, working day and night to produce, the best information we have without having the information that Mr. Person has available to him. He has had six and a half years to prepare this case, your Honor.

Presumably he did not come into court without having some idea what he was going to prove. I think we are entitled to have that idea. It's for that reason that I am requesting -- he says he's going to be ready. I would like to see it tomorrow.

THE COURT: What will you have tomorrow? It has to be in a form we can deal with. It can't be a lot of papers.

MR. KLEINBARD: His material may be helpful to us.

THE COURT: Your material may be helpful to him. It's a matter of commanding it and getting it agreed to, if we possibly can.

What do you have?

MR. PERSON: The form that I have, your Honor, is after a lot of consultation with myself since I don't have their resources --

MR. KLEINBARD: Could we eliminate those references. They're very noxious, really.

MR. PERSON: You have quite a lot of resources. It's true. You have been working on this yourself for sometime.

THE COURT: Let's go ahead. This is just talk.

MR. PERSON: This is the manner in which I am detailing the history of a single car transaction (handing), the ones that were the cancellations that we are complaining about, and I've done --

THE COURT: How many do you have?

MR. PERSON: I have done a substantial number of them.

THE COURT: How many are you complaining about?

MR. PERSON: The summary is not fully completed but I would estimate it numbers probably about 80, your Honor. Probably more than that, but somewhere in that range. I'm trying to throw in long delays as well.

THE COURT: How many failures to delivery do you have?

MR. PERSON: May I be specific tomorrow morning?

THE COURT: You work on it tonight. Both sides please work on this. I really had hoped that this could be presented, we can get these things in hand, at the beginning of the week. The reason I had hoped this was that, it seems to me, so fundamental and therefore I had hoped that we could have it and have it quickly. This is not really quickly but at the beginning of the week.

I have one of those motion days Friday so we'll sit tomorrow but we will not sit Friday.

I think this is going to be very important in really winding up the plaintiffs' case, to see what the facts are on these subjects. The plaintiffs' case presumably is about wound up, so I am concerned about the time.

MR. KLEINBARD: How does your Honor propose to handle this? Are we going to have a conference with your Honor about these exhibits?

THE COURT: It depends on what they show and how many difficulties there are.

If we were at a stage where we really had the time, I think that these things should be the subject of stipulation. I'm sure that this is a tall order, to talk about stipulating these things because they're probably just masses of items that are involved, but I would expect that it would be possible to do one of two things: I think a lot of it undoubtedly can be stipulated.

To the extent it cannot be it seems to me that there could be a witness who would testify as to the method by which the charts, the information in the charts, is derived, so that the material could get into evidence.

In other words, if it's not stipulated it gets into evidence if it's got a reasonable basis.

That's procedural how we work with it.

The thing that I think has to be wrestled with is this: How much more of a trial does this case require?

Strictly speaking, the next juncture in the case is when the plaintiff rests, and at that time there would be the normal occasion for motions to dismiss, and if the motions are granted that at least ends the case for the time being; and if the motions are denied the defense goes forward.

In my own mind I was putting that formal train of events aside, and I was simply looking at it in somewhat different form. I was not thinking exactly whether this would be plaintiffs' evidence or defendants' evidence. I was thinking of it simply as facts in the case. I was thinking of it as facts which would materially determine how much of a further case there is that has to be put in.

If the plaintiffs will not stipulate to this material and if the defense has to substantiate it by evidence, then, of course, it does not come in, strictly speaking, until the defense case.

So, it could not be used on a motion to dismiss, but I'm inclined, in the interests of some efficiency, to somehow bridge some of those procedural hurdles and I frankly am not too concerned about the formalities at this point.

It seems to me that if the situation is revealed as it seems to have been foreshadowed in the discussion we had that Sunday night, there are big partsof this case which do not deserve to go, and cannot go, to this jury. I don't think there is any question about that.

So it seems to me that it is the obligation of the Court to try to act in some way to get this case down to size. It's a long way around of saying that I believe that there ought to be a format where this material can get before the Court and can be used to limit the issues with which we proceed. I don't see any reason to have another three weeks of witnesses about matters where there are no damages that anybody can even talk about. It may be that a motion to dismiss the entire case would be granted.

It may be that would be inappropriate but that the case would be limited.

I think the Court has the power at any stage to dispose of baseless claims and continue only with the claims that are worth continuing with.

So that's why, Mr. Kleinbard, I am anxious to get that in court as soon as possible, and I want to use it in the best way we can. Time is important to me. This case has gone on. This is the 23rd trial day, if we start with the preliminary hearings. We started, as you well know, on October 6.

MR. KLEINBARD: It's burned in my memory, your Honor.

THE COURT: That's really not the point.

I think we have a hard job. I don't think that this material will appear and all of a sudden the case will become crystal clear or simple or anything. I think the material will appear. I think it's important material. And I think it will take a lot of work to figure out how to deal with it.

MR. KLEINBARD: That's one of the things I want to address myself to. That concerns me. Assuming I get to understand it tonight, and I'm prepared to so understand or at least to devote the time to understanding it, what I know about it to date persuades me it's going to take time to explain it to anybody.

I agree with your Honor that it's desirable and it may help to cut down the case. I hope it will. I assume that Mr. Person's material, as he indicates here, will likewise do the same.

However, I think we should have the opportunity to confer with your Honor about these charts as soon as possible because with the weekend coming up, if the format is either unacceptable to your Honor or so complex or so whatever that neither side can make the stipulations you want to have, as I see it, we are going to have to have testimony by attorneys because they're the only persons who participated in the preparation, certainly on Mr. Person's side, and our side will have somebody, I assume, from the consumer department in Detroit.

I think we ought to know how much we are going to have to do, what your Honor --

THE COURT: Bring it in.

MR. KLEINBARD: I definitely will see it. The reason I'm raising it is maybe your Honor would want to do something about the jury tomorrow, that we have sometime to confer with you. It's not easy to understand. We can trace it through and there is no point in throwing it out and then having everybody go off in a different direction without any guidance from your Honor. We are doing this at your request, after all.

THE COURT: I think you are helping Mr. Person in filling out your forms and you will have your material as specific as you can by tomorrow.

Mr. Kleinbard, I just ask both of you to bring in whatever you have, in whatever shape, and that would be the biggest help we can have.

We'll take a short recess.

(Recess)

T6

(Jury present.)

MR. KAPLAN: I have distributed Defendants' Exhibit E in evidence to members of the jury, which is a list of automobiles which General Auto Sales obtained from GM dealers in the Buffalo area through December, 1970.

BY MR. KAPLAN:

Q Mr. Strimple, you also have that in front of you, right?

A Yes, sir.

Q That is not all the GM cars you got from dealers in Buffalo, true?

A I don't know.

Q Well, in fact, you used to get cars for Mr. Young, right?

A Right.

Q Between the time he began to order from you and the time you went out of business he ordered at least 37 cars from you, right?

A That is what he said.

Q He got all of those cars, right?

A Did he get all of them?

Q Right.

A I think all cars that he ordered from me he got.

Q You got them from dealers in Buffalo?

A Yes.

Q That is more cars than there are on the sheet altogether, Defendants' Exhibit E, right?

A Yes.

THE COURT: Speak up, please. Take your hand away from your mouth so we can hear you. What is the answer?

A Yes.

THE COURT: For some reason I assumed that Exhibit E included cars that General was ordering for itself as well as cars that General was ordering for Young. Am I wrong?

MR. KAPLAN: Your Honor, what Exhibit E is is a tabulation of all cars we have been able to find that they bought. We have very handicapped in doing this because they don't have any records. These are pieced together here and they are from records we have been able to get from dealers in Buffalo. There are more cars.

THE COURT: Does Young have records?

MR. PERSON: Yes, we supplied a list of cars that he acquired.

Q Are you able to tell whether --

MR. KAPLAN: I don't know, offhand. We would look, but Young's testimony is he got 37 cars from Mr. Strimple and there are 37 cars on Exhibit E, so there are more cars. We don't know how many.

THE COURT: Go ahead.

BY MR. KAPLAN:

Q Mr. Strimple, there came a time in 1968 when you were buying cars from Gillogly Chevrolet, right?

A Yes.

Q You asked them to get a fleetallowance from General Motors for you, true?

A Yes.

Q They did, true?

A Yes.

Q You got checks from General Motors for fleet allowances on cars, Chevrolets, you bought from Hamister-Gillogly Chevrolet, right?

A Is that in 1968 or 1969?

Q I have the check here and we will get the date for a minute. True?

A I got a check at one time.

Q Do you remember which year it was?

A No.

MR. KAPLAN: Your Honor, at this time I offer in evidence Defendants' Exhibits FF, II and JJ.

MR. PERSON: No objection.

THE COURT: Received.

xx (Defendants' Exhibits FF, II and JJ received in evidence.)

MR. KAPLAN: To save time, I will tell you what they are.

(Exhibits read.)

THE COURT: Who is that signed by?

MR. KAPLAN: By Mr. Womack.

THE COURT: Who signed for Clements-Gillogly?

MR. KAPLAN: It looks like Dick Holstead, but I am not certain.

THE WITNESS: Could I look at this, Mr. Kaplan?

Q Yes (handing to witness).

A Mr. Kaplan, these cars were not leased for six months.

Q Did you tell Mr. Hamister the cars listed on that letter, Defendants' Exhibit FF, were leased?

A No, never talked to Mr. Hamister.

Q Did you tell anybody at Clements-Gillogly these cars were leased for six months?

A I talked to Mr. O'Donnell, who ordered the cars for me.

Q Did you tell him they were going to be leased?

A No, I told him only that I was buying cars for resale.

Q You gave him the serial numbers, though, of -he cars, right?

A I gave him serial numbers of automobiles that had been purchased by General Auto and even asked him what Mr. English thought of this at the time.

Q You got the check, is that right?

A Yes, for so many purchases, right.

Q Mr. Strimple, you talked some more about Econo-Car before. You said there was some kind of subterfuge.

These cars that you were ordering, the ones you claim you were connected with Econo-Car, is it your testimony you would call a dealer and tell him you wanted cars for Econo-Car?

A No.

Q What did you tell him?

A I told him that, as I said originally, I said that I was introduced as an associate of Mr. Hennessey for leasing. The dealers were trying to sell me cars, they could not sell me cars unless they could justify me as a leasing company and I used it so I could get the automobiles.

Q What did you tell the dealer about Econo-Car when you called up to get cars?

A They already were selling me Econo-Car and in fact I asked Mr. O'Donnell what Mr. English said on this and he said, "What Mr. English doesn't know doesn't hurt him."

MR. KAPLAN: I object and move to strike the answer as hearsay, your Honor.

MR. PERSON: I oppose the motion. I believe that has been opened by the line of inquiry.

THE COURT: Motion denied.

Q What did you tell the people at Gillogly Chevrolet about Econo-Car when you called up to order cars for your own business?

A I didn't have to tell them anything, I just told them I wanted a particular automobile and they asked me in the end when the car come in who I wanted it billed to.

THE COURT: Mr. Reporter, there was a long answer that I would like read back.

(Record read.)

THE COURT: You heard what was reread just now?

THE WITNESS: Yes.

THE COURT: I think that the firstportion, was that something you told Mr. Hennessey?

THE WITNESS: Mr. Hennessey had already told Mr. Holstead --

THE COURT: But I want to be clear. Go back and read it again.

(Record read as follows):

"A I told him that, as I said originally, I said that I was introduced as an associate of Mr. Hennessey for leasing. The dealers were trying to sell me cars, they could not sell me cars unless they could justify me as a leasing company, and I used it so I could get the automobiles."

THE COURT: You said a minute ago that the dealers would not sell cars to you unless they could justify you on the basis you were a leasing company. That is what you told us a minute ago. Did you hear that?

THE WITNESS: Yes.

THE COURT: Now, is that what these dealers told you when you went around in the Fall of 1967? Is that what you are referring to? Did they tell you they couldn't sell cars to you unless you were a leasing company?

MR. KAPLAN: May I respectfully object to your Honor's question?

THE WITNESS: They referred back to a fleet number which they gave to leasing companies and a person who bought so many cars in a year could get this fleet number.

They all stipulated they wanted to sell me automobiles and they agreed to and then they couldn't.

So then they -- Hennessey, who had a leasing number, introduced me as his associate and then I was able to get automobiles so long as I was Hennessey's associate in this.

THE COURT: That isn't my question. What I really want to know from you is this:

The companies that you said refused or declined to deal with you in the Fall of 1967, did they decline to deal with you at all or declined to deal with you only unless you were a leasing company?

Do you understand my question?

MR. PERSON: May I ask --

THE COURT: No, just don't ask anything.

THE WITNESS: I am trying to answer your question.

THE COURT: Do you understand my question?

THE WITNESS: You are asking me did they say --

2 THE COURT: I want the passage read that you gave and I want it once more.

Mr. Reporter, go back.

MR. PERSON: May I have a side bar one second? It is very important I think your Honor.

THE COURT: This is just what he testified to.

MR. PERSON: That --

THE COURT: Just a minute. I want the record to note the sentence that was reread to Mr. Strimple and I want it repeated. Have you got that?

This is a little cumbersome. I will have that reread to you once more and I want to ask you a question.

(The record was read as follows):

"A I told him that, as I said originally, I said that I was introduced as an associate of Mr. Hennessey for leasing.

"The dealers were trying to sell me cars, they couldn't sell me cars unless they could justify me as a leasing company, and I used it so I could get the automobiles."

THE COURT: Mr. Strimple, my question to you is this: the testimony that you gave, that one sentence or so about dealers were trying to sell me and so forth, you had that read back to you two or three times now?

THE WITNESS: Right.

THE COURT: My question is simply one of chronology as I didn't understand what you were referring to: In that sense were you referring to your conversations with dealers in the fall of 1967? Was that the reference you were making?

THE WITNESS: Reference all the way through, yes.

THE COURT: I don't want to prolong this. You were referring in that little bit of testimony to what occurred in the fall of 1967, correct?

THE WITNESS: In 1968, this occurred, in the cars.

THE COURT: You were not referring in that sentence to your conversations about 200 to 400 cars in the fall of 1967; is that right? I want to know one way or the other what that means.

THE WITNESS: It ties in. It has to be explained. It's not yes or no.

MR. PERSON: Could he explain it?

THE COURT: There was a motion. I think that was very confused. We'll go over it after the recess, after we adjourn and see where we stand.

You go ahead for a few minutes.

MR. KAPLAN: In light of that comment I

want an opportunity to see today's transcript before we go further.

MR. PERSON: I think it would be useful if we could finish that. I don't want charges prompted. I think he has the answer.

THE COURT: There won't be any charges.

MR. PERSON: I would like to talk to him about it.

THE COURT: We'll adjourn and the jury will retire.

(Jury out)

MR. KAPLAN: I would like to move that the witness be directed not to speak to anyone about his testimony before he resumes the stand tomorrow.

MR. PERSON: I object to that. I would like to have him testify right here and now as to what he wants to say.

THE COURT: Testify.

MR. PERSON: May I examine him?

THE COURT: The problem was, in the first place he was asked a question about -- I don't recall what it was -- and he answered by mixing up conversations with Hennessey with statements of narrative and so forth. After three or four re-readings I don't know what the testimony means. It could be very significant. It could mean nothing. If it means anything I don'tknow that it refers to.

MR. PERSON: It should not take long.

THE COURT: Go ahead. Find out what it means.

EXAMINATION BY
MR. PERSON:

Q Mr. Strimple --

MR. KAPLAN: I register an objection.

THE COURT: This is not in the presence of the jury.

MR. KAPLAN: I believe what is going to happen, so it will appear in the record, this questioning may suggest to the witness what the explanation ought to be.

MR. PERSON: Let him give his explanation then.

MR. KAPLAN: I object most strenuously to the cross being interrupted at this point. This is quite clearly the first time in two or three days on the stand that anything like this has come out of the witness' mouth. I believe in 800 pages od deposition nothing like it came out. This is at least the third explanation for why the dealers were selling to him, and I don't want any opportunity for a new story to be placed in his mind.

THE COURT There is perhaps a new story.

MR. KAPLAN: I would prefer it be the witness' rather than Mr. Person's.

THE COURT: I say this to both counsel: I don' think it's appropriate to explain what I thought in the presence of the witness, but I am perfectly willing to hear from his own mouth now what he says is the so-called explanation. I don't know what he is referring to, but he can certainly give it.

EXAMINATION BY
THE COURT:

Q What do you want to say?

A Isn't this in reference to getting the availability of automobiles? Wasn't that the question?

Q Don't ask me questions.

A I had received a fleet allotment allowance as a result of these purchases.

Q Mr. Strimple, you testified right after the recess what has been read to you at least five or six times now, and I want it read at least a seventh or eighth time. I want that sentence read, and I want to isolate it. It starts with "The dealers were."

BY THE COURT REPORTER:

"Q What did you tell him?

"A I told him that I said, as I said originally, I said that I was introduced as an associate of Mr. Hennessey for leasing. The dealers were trying to sell me cars. They could not sell me cars unless they could justify me as a leasing company and I used it so I could get the automobiles."

THE COURT: Stop there.

You have heard the sentence beginning "The dealers were" and so forth.

Do you want to hear it again?

A The dealers were --

THE COURT: Read it again.

BY THE COURT REPORTER:

"The dealers were trying to sell me cars. They could not sell me cars unless they could justify me as a leasing company and I used it so I could get the automobiles."

THE COURT: My question to you is: When you said just now, or after the recess: The dealers were trying to sell me cars and they could not unless they could justify me as a leasing company -- were you referring to events or the situation in the fall of 1967 when you were going around with the proposals for 200 to 400 cars? What were you referring to?

THE WITNESS: I was referring to the fact that they wanted to sell me automobiles and that after I becamse associated with Hennessey they could and they did.

THE COURT: Mr. Strimple, let's have it read once more.

BY THE COURT REPORTER:

"The dealers were trying to sell me cars. They could not sell me cars unless they could justify me as a leasing company and I used it so I could get the automobiles."

THE COURT: Mr. Strimple, you have heard many, many times now this testimony of yours which you gave. It was your testimony "The dealers were trying to sell me cars. They could not do so unless they could justify me as a leasing company."

When was itthat that was occurring? What were you referring to?

THE WITNESS: I was referring to this all the way through my experience in automobiles, from the time I was trying to get a supply I ran into fleet numbers and leasing numbers and this sort of thing.

THE COURT: Were you referring, at least in part, to discussions you had in the fall of 1967 about the 200 or 400 car proposals? Yes or no.

THE WITNESS: I was talking in terms of this 1968, but it referred back to 1967.

THE COURT: In 1967 with the dealers saying to you that they could not sell to you unless they could justify you as a leasing company? Did anyone say that to you in 1967, I mean?

THE WITNESS: They said: We had to get you a fleet number, that you have to have a fleet number in order to do this.

THE COURT: Who said that to you?

THE WITNESS: Originally Holdstead was talking about the fleet number.

THE COURT: Who else?

THE WITNESS: Kem Dengler was talking about a fleet number.

THE COURT: It is not a matter of talk about a fleet number. People talk about fleet numbers for the fun of it.

THE WITNESS: They said: You need a fleet number.

THE COURT: Was Kem Dengler one of the people that he said they could not sell to you unless they could justify you as a leasing company? Did he say that to you?

(Pause)

A If I had a fleet number.

THE COURT: Did he say that to you? The thing you testified to shortly after the recess, was Kem Dengler somebody who said that to you?

THE WITNESS: Talking absolutely specifically that he said it in this terminology, they talked fleet numbers, that Hennessey was a leasing company and as long as I could show that, a leasing fleet number, I could get all the cars I wanted.

THE COURT: When did he say that to you?

THE WITNESS: Back after I got the problem eliminated of getting cars and went as a representative of leasing, and the same people then, like Bob Baines and Clements-Gillogly and them, they began selling me cars, to General.

Up and through this 1967 period I could not get cars. After I became in associate with Leasing, then I started getting cars. But I had to act like

I'm a leasing company and I did not lease a car.

THE COURT: But back in 1967, when you were making the 200 to 400 car proposals, at that time did any of these dealers --

THE WITNESS: Baines asked me if I had a fleet number.

THE COURT: Did they tell you what you referred to after the recess, namely that they were trying to sell you cars but they could not unless they could justify you as a leasing company? Did anyof them say that back in the fall of '67?

THE WITNESS: Not in those terms. They agreed to sell and could not. In 1968 when I started getting automobiles I found out that it was due to the fact of the leasing fleet number and this and that and I could get this.

THE COURT: Back in the fall of 1967 did anybody refer to a fleet number?

THE WITNESS: Yes.

THE COURT: Who?

THE WITNESS: Dengler, Hamister, Gillogly.

THE COURT: What did they say about it? You just don't refer to a fleet number.

THE WITNESS: They asked if I had a fleet number.

THE COURT: They asked you if you could get a fleet number?

THE WITNESS: They asked me if I had a fleet number.

THE COURT: Did they say that? When they were talking about dealing with you at first or when they were refusing?

THE WITNESS: When they were refusing.

THE COURT: What did they say about a fleet number when they were refusing?

THE WITNESS: "Do you have a fleet number?"

THE COURT: Then what did they say?

THE WITNESS: They said "Well, get one."

THE COURT: This was said at the time they were refusing?

THE WITNESS: Yes.

THE COURT: What did you say?

THE WITNESS: "If I had a fleet number I would have a magic formula for getting cars."

THE COURT: Who said that?

THE WITNESS: They didn't say it was a magic formula. It was just that every time I turned around to get supplied they hit me with this fleet number. Like I said, Hennessey had a fleet number and he was getting cars.

THE COURT: Mr. Strimple, in my mind there is a distinction between the conversations you had in the fall of 1967 and the conversations you may have had in 1968. Are you with me? Do you understand the distinction I'm drawing?

THE WITNESS: Yes.

THE COURT: As I understand it, you went around in the fall of 1967, according to your testimony, and asked for 200 to 400 cars, right?

THE WITNESS: Right.

THE COURT: There has not been any testimony that you in 1968 kept going around and asking for 200 to 400 cars.

THE WITNESS: No.

THE COURT: So the fall of '67, shall we go back there?

THE WITNESS: Yes.

THE COURT: Are you telling me that when some of them refused you cars they told you that you should get a fleet number?

THE WITNESS: Yes.

THE COURT: What did you say?

THE WITNESS: I said "How do I get a fleet number?"

THE COURT: What did they say?

THE WITNESS: They said "You have to buy so many automobiles for lease."

THE COURT: "For lease"? Did they say that? You said they said it. What did you say after that?

THE WITNESS: I said "If I can't get the cars, buy the cars to start with, how can I get the fleet number?"

THE COURT: What did they say to that?

THE WITNESS: This is when Holstead and O'Donnell started trying to help me get a leasing number in '68.

THE COURT: Let's go back to '67.

THE WITNESS: They just dropped me. In this period of time they dropped me until I got in with the leasing company and sort of used his influence to start getting cars.

THE COURT: I want to excuse you. I mean, until further notice, directing that you not discuss this particular portion of your testimony with anybody. That will be for your protection as well. You go out in the hall for a minute. I'll have a discussion with the lawyers.

(Witness excused)

$97:THE COURT: I think you'll have to look over the record. This piece of testimony frankly astounded me. That's why I asked it be re-read. I wanted to find out what it meant.

It may be part of the testimony that you moved to strike. I don't know. It may be that the testimony will have to be stricken. Certainly it was not responsive, but that's not the end of the matter. It may get into the hearsay problems which we have sought to exclude.

When I heard your motion I didn't know what the answer or answers embraced, whether it was conversations with Hennessey or what. It still is not all that clear to me because I think he mixed up several things in a kind of narrative. I want to reconsider the motion to strike tomorrow when we get the record.

According to my instructions, Mr. Person was prevented, and he was of course prevented, from asking and the witness was prevented from saying what the dealers had told him by way of reasons; but the trouble with this kind of incomplete presentation where you just hear his side of the story is that it's incomplete. It's just one of the perpetual problems of this litigation.

It seems to me it makes a difference whether he was absolutely refused cars or whether he was told he had to have a fleet certificate, because if he was told he had to have a fleet certificate that could mean, that could coincide with Mr. Person's argument that he has made frequently, that these dealers were telling Nabcor they had to have a fleet certificate.

On the other hand, it may indicate some confusion in the relationship or the dealings, and it may be that Strimple was going and representing himself as a leasing company and trying to get something besides just cars.

I don't know what the significance of this is, and I guess the best way to handle it is to go over the record and stick to the basic path of cutting out the hearsay testimony.

MR. KAPLAN: The other alternative is that some other kinds of people were eligible to have their purchases considered for a $50 rebate, and it may be that dealers would sell to Strimple but not at the prices wanted. I offer this as a third hypothesis.

pgr15

He did in fact testify that Hallman Chevrolet quoted him a higher price.

MR.PERSON: That in itself doesn't take into account the $50 rebate. That was about $200 over and that's only one instance.

THE COURT: Did anybody ask him if he represented to these people that he was a leasing company?

MR. KAPLAN: Yes. Do you remember the examination of that last Chevrolet, this morning, we asked him whether he told them he was reselling and he said no and he said he knew the dealers regarded him as competition if they knew that, and he made it a point not to tell him he was reselling, and that there were occasions where the dealers later found out.

That's all on the redord from the first part of the cross.

MR. PERSON: There is nothing in the record that I'm aware of that he was telling he was a leasing company. I think he was asking to buy cars from dealers.

THE COURT: There is this letter.

MR. PERSON: That's '68.

THE COURT: '68 is not too far from '67. We treat this thing as a sort of big watershed between the fall of '67 and the spring of '68. I don't imagine it really happened this way. I don't know. How come this letter of July 29, 1968 has a list, a bunch of serial numbers which could only have come from General?

Clements-Gillogly could not have had that list, and it says these cars were all leased for a period of six months or more. Who does that come from?

MR. PERSON: I would presume that General supplied serial numbers to Clements-Gillogly.

THE COURT: How about the statement that these cars were all leased for a period of six months or more?

MR. PERSON: That's consistent with what he is saying for the period in 1968. I think the problem is not '68 but what happened in '67.

He has testified that in '68 he is passing himself off as a leasing company and he had to do that. He could have gotten cars probably if he had done that earlier.

THE COURT: What bothers me, this thing about the fall of '67 is very murky. He's going around and asking about 200 to 400 cars. That presents unique problems no matter how you slice it.

I don't know who these dealers are but this is not in the center of Manhattan Island. Kem Dengler is in some little town 85 miles from Buffalo. You go out to him and talk about 200 to 400 cars, I don't know what that means to Kem Dengler. Maybe he's a vast establishment.

On the other hand, Kem Dengler may be a very, very tiny outfit. I don't have the faintest idea. It seems to me that this thing about the 200 to 400 cars, it may be that with the new model year there is a problem about allotment and maybe they were saying you have got to be a leasing company in order to get an allotment. I don't know.

MR. PERSON: I would like to point out that the bulletin of the BADA, Exhibit 310, was sent to all these dealers except Kem Dengler.

THE COURT: Kem Dengler is fairly prominent in this.

MR. PERSON: The bulletin itself made no bones as to what General was. There is no misrepresentation. He was not bragging about it but at least the word had been distributed to these people. They knew who he was.

THE COURT: How do you know whether they read it or what they did with that thing? I don't know.

MR. KAPLAN: I would like Mr. Person to point out where Mr. Strimple or General is mentioned in there, because it's my recollection that it's not.

THE COURT: General?

MR. KAPLAN: Or Mr. Strimple.

THE COURT: That's another folly on the part of mine, probably, to make so much out of this.

MR. PERSON: Multi-Make is referred to here, and it says the Nabcor brokers. They're not talking about a leasing company that was born. It's quite the contrary. These people were members of the BADA. The factory obtained a copy of this. There is no way that General could hide the fact of what it was doing.

THE COURT: Let me ask you this: If Mr. Strimple were permitted to testify as to what these dealers told him when they allegedly refused to deal in the fall of 1967, what is your information as to what he would say? Do you know? Have you interviewed him ?

MR. PERSON: I have interviewed --

THE COURT: Have you interviewed him?

MR. PERSON: I have interviewed every

witness whose name is in the book. Immediately after talking with each witness I put down what the witness would testify to. That's the basis on which I compiled the 306 page brief.

If you take a look at any dealer, Glen Campbell, and I looked previously for Glen Campbell, the testimony that Dale Strimple, the information he gave me, when I compiled the book and I compiled it over a nine-week period, interviewing everybody, was that during 1967 or 1968, after publication of 9/29/67 bulletin about Nabcor and General by the Buffalo ADA, Strimple spoke by telephone two times with Tony Pierri, the sales manager of Glen Campbell Chevrolet and asked to buy cars.

Pierri asked for General's fleet certificate number and said he could not sell cars to General unless General had a fleet number.

Strimple said he had not but could he help to get him one.

Pierri said he could not because General needed to have so many cars before applying. Could have so many cars before.

Strimple said that this is a circle that you can't get out of.

THE COURT: That is all the dealers used the fleet number thing?

MR. PERSON: Because we are being very precise I have to be precise and say I would rahter go dealer by dealer. I have everything for each dealer.

Let's take Kem-Dengler, an outlying dealer.

Strimple and Bolling stopped in in person with Mr. Dengler shortly after the English thing explained that Nabcor wanted to buy several hundred Chevrolets and Oldsmobiles and Dengler was glad to sell. Denglar told Strimple and Bolling to lunch and the price was $25 over or established the fleet price. Strimple had five orders with him and gave them to Dengler and the next day or so General got a letter or a call from Dengler stating that Dengler talked to someone at zone and would not give him a fleet allotment because Nabcor and General did not have a fleet certificate. GM would not let him sell cars like that, Dengler said, and he is returning the orders. Bolling asked Dengler for a fleet certificate number. That is what I found out from my witness on it.

THE COURT: It isn't particular consistent with a conspiracy based on the association. I am just trying to put together my thoughts right at the moment and why I was so surprised because if you have a conspiracy based on an association memo and have English in there saying you can't sell, period, that doesn't have anything to do with the fleet certificate or allotment. It is just a blanket we won't sell.

Now, if a dealer is calling General Motors and trying to get an allotment so they can give 200 or 400 new models, including Corvettes, and all to General, unless it is a ruse, you know the thing doesn't sound like a ruse, the testimony wasn't that way it won't appear, but the conversation, just a conversation described just now is something else besides a conspiracy based on that association bulletin participated in by English not to sell.

Again, as practically in every step in this case it is really difficult for me to understand what your position is. I won't get into the questions of admissibility of evidence, but right now I don't understand what your claim is as far as what went on in the Buffalo zone.

Again, putting aside evidence about the claim, I don't know what you claim is.

MR. PERSON: The claim is the dealer would not sell to him for resale and the dealers would sell to him if he was an approved purchaser of GM. That is, GM had him on a list for approved purchasers, they would sell.

But all of them had agreed, except for Tony Pieri, had agreed to sell to him and then --

THE COURT: Who is Pieri's company?

MR. PERSON: Glenn Campbell, he was sales manager.

THE COURT: What you say doesn't make sense, Mr. Person. If these dealers were acting on that association memo and they were conspiring and agreeing not to sell to Nabcor, what difference does it make to them whether Nabcor is an approved purchaser? They wouldn't sell to him.

MR. PERSON: In other words, they would not sell to him because they were retail resellers.

If, on the other hand, he had been a recognized fleet account they would have sold to him and that would not be in competition. It would not have been the retail resale. It is understandable.

THE COURT: In other words, if General was really a leasing company they would not regard --

MR. PERSON: There would not have been no such report, your Honor, if they had been a qualified leasing company.

THE COURT: We go round and round because the September 27 memo says that, whoever refers to it -- it doesn't talk about Avis and Hertz, right?

MR. PERSON: That is correct.

THE COURT: Brokers, and I guess as someone pointed out, it doesn't specifically mention General but talks about Nabcor, right, and talks about Multi-Make.

MR. PERSON: Brokers selling at prices to make a profit for himself. The broker is reselling cars. The leasing company is not selling cars.

THE COURT: I thought your claim was that this memo was implemented by the dealers following the suggestion in the memo that led to all of these events in the Fall of 1967 where Strimple goes around to dealer after dealer and they all say no, flat no.

MR. PERSON: Not at the outset.

THE COURT: I mean after a meeting or so they all end up saying no.

MR.PERSON: But all started off saying yes.

THE COURT: Then they say no. I am talking about the no right now.

MR. PERSON: Correct.

THE COURT: And this was in implementation of the association bulletin.

MR. PERSON: Through the factory, probably.

THE COURT: And the factory, you say, was represented by English, who appeared at Clements-Gillogly and said, "If I catch any dealer selling to whoever," whether he said Nabcor or General, but he knew Nabcor, "they won't get any cars from General Motors."

If that line of reasoning means just no cars, we are not going to sell to Nabcor or its franchisees, now that to me is one type of claim.

MR. PERSON: Right.

THE COURT: And it is different and it seems to me it is inconsistent with the idea --

MR. PERSON: No, it isn't.

THE COURT: -- that the alleged conspiracy was to only sell to Nabcor or a franchisee if that franchisee or if Nabcor was a leasing company with a record of purchases with General Motors.

MR. PERSON: It doesn't, at least I don't see it that way. I see it that to deal with Nabcor in light of this bulletin they would be dealing with a company that was reselling cars and such company can't qualify for the fleet certificate and the zone or the fleet section has very stringent requirements about who can get a fleet certificate and who cannot.

But these dealers had said at the outset they wanted to deal with Nabcor and they had factory contact in terms of whether they could deal with Nabcor and in each case they came back and said, "No, we can't deal with Nabcor," and mentioned the factory line, that Nabcor doesnot have a qualified fleet certificate, doesn't have a fleet number.

THE COURT: We are not getting anywhere, but we will look at the record and see. I have another case.

I don't think there is any reasonto prevent Mr. Strimple from talking to counsel.

MR. KAPLAN: I must at this time respectfully disagree with that. I renew my application.

THE COURT: The application is what?

MR. KAPLAN: An order to prevent the witness from discussing that. I think I tried to suggest before that this line of testimony which caused so much excitement today is a brand version of these events sparked by a need to explain away the 1968 sales.

I think he was put up to it not in any

malicious or evil or corrupt sense but in the sense that I think as is obvious today he is a very suggestible person and if you ask question after question and give him enough time the answers the way you want.

THE COURT: Here is the thing that I go back to, Mr. Kaplan. It seems to me the probabilities are if we have the situation that throughout his testimony at the trial I have excluded any testimony about what dealers said to him in the course of refusing.

Now, what he slipped in really was in effect a statement of that. I think that is what the situation is. We will reread the record, so probably the result tomorrow will be that that is stricken and we adhere to the ruling as we have been.

In other words, he can't testify to what the dealers said to him in refusing, as to their reason and so forth.

Now, that is the ruling we had so far, right?

MR. KAPLAN: Agreed.

2 THE COURT: Now, if the result of all this go-around is simply to go back to Square 1 and to the ruling we tried to adhere to, then he is not going to testify about those conversations at all, and it was

really he just slipped that in.

So what I am really getting around to, I don't know what he has said on the stand -- I am referring to that testimony and it is not really inconsistent with anything he said at the trial. I don't know that because he was never permitted to testify about those conversations at all. Are you with me?

MR. KAPLAN: Yes.

THE COURT: Now, I guess what you are saying is, it may be completely inconsistent with what was said at the deposition.

MR. KAPLAN: It certainly is in part.

THE COURT: But I think I am not --

MR. KAPLAN: I wouldn't object to Mr. Person conferring before the start of redirect, but I would before we finish our cross.

MR. PERSON: That is denying a person counsel and that isn't right either, and I would like to say one other thing, that the witness has said, and I am not saying there is any fault in this, but the witness has said that he felt intimidated by the reading of the perjury statute, so possibly that has had a little bit of an effect on the witness.

THE COURT: I will stand by the perjury statute.

MR. PERSON: I know you do, your Honor, but the witness has in fact felt --

THE COURT: I will not direct him not to confer with Mr. Person. He is his lawyer and he has to confer.

We will adjourn until 9.30.

(Adjourned to November 18, 1976, at 9.30 A.M.)

NATIONAL AUTO BROKERS CORP.,
et al.,
Plaintiffs,
vs.
GENERAL MOTORS CORPORATION,
et al.,
Defendants.

70 Civ 5 5421A

New York, November 18, 1976;
9.30 A.M.

Trial resumed.

- -

(Jury not present.)

THE COURT: What do we have this morning?

MR. KLEINBARD: We have the analysis of the Nabcor-GM transactions which are filed by individual divisions and also total orders, and this is working from the order file, Plaintiffs' Exhibit 450, which we have tried to account for all of the orders there. We have been able to do so in part.

In addition to that, there are other orders that are not reflected in the log but for which we have -- there are matters not referred to in the order log, of which we have independent evidence from police books or other documents so that the total number of cars delivered will exceed that reported in the log. It probably will.

The problem is that since some of the cars reflected in Plaintiffs' Exhibit 450 are either cancelled or have no disposition or whatever, we have additional cars which are not reflected in the log. They may be some of the cars for which he has no disposition, but we have no way of telling that.

THE COURT: Are there certain of those things that I can have and Mr. Person can have?

MR. KLEINBARD: Yes.

MR. PERSON: I have photocopies of up to 20r and other photocopies are coming.

THE COURT: I have another matter which I will take up in the robing room.

When will they be finished, Mr. Person?

MR. PERSON: Definitely on Monday, the whole thing.

(Recess.)

THE COURT: Let me go back to Mr. Person.

As I understand what you are proposing to do was to give me write-ups about situations where you claim there was a refusal to deal or some other problem like a delay. You are not purporting to give the successful transactions?

MR. PERSON: Correct, your Honor.

THE COURT: You have now given me Xerox copies of these narrative forms and in how many cases?

MR. PERSON: I haven't counted how many in each batch, but I believe by Monday I should have probably around 100 and right now I probably have around I guess 70 or 80.

THE COURT: You have given those to Mr. Kleinbard?

MR. PERSON: No, I haven't.

THE COURT: You better give these to Mr. Kleinbard.

MR. PERSON: It takes longer to Xerox them.

MR. KLEINBARD: I just thought I might start again because we were interrupted.

What we have is an attempt to explain the logbook in its entirety and we have omitted from our summary log entries which did not indicate a particular dealer. This in a separate schedule, your Honor.

I have a blue-back exhibit. Is that it?

MR. KLEINBARD: I don't think it is in a blue back. It is headed "Schedule of Order Log Entries With No Indication Of Order From Franchised Dealers." I think it contains some 50-odd General Motors cars, if I remember correctly.

On the one in the blue back, what you are probably referring to, this gives you on the first page a summary of broker activities as best we can put it together, and then underneath that a breakdown by individual broker. In other words, it is the back-up data for the summary sheet for each Nabcor broker.

THE COURT: What is this Defendants' Exhibit X-5, is that a complete list?

MR. KLEINBARD: A list of brokers which is in evidence I believe, your Honor, which we have compiled as a result of an examination of the records. I don't think that is in dispute.

THE COURT: We will take that.

MR. PERSON: I don't think they have included all of the brokers that were listed on the sheet we gave originally.

MR. KAPLAN: I recall the sheet, and part of the problem is that that sheet which you gave us listed brokers who had signed up to March 4, 1971, whereas Defendants' Exhibit X-5 has a cut-off.

THE COURT: Your intention is to have what you say here, an accurate reflection of brokers signed up through December 10, 1970?

MR. KLEINBARD: That is correct.

THE COURT: Subject to check, but you had people do that?

MR. KLEINBARD: Right.

THE COURT: Let us take that for the present.

MR.KLEINBARD: That indicates, as you can see from the summary, that the majority of the orders are bunched in a handful of brokers and there are roughly half of the brokers who submitted no orders at all, and it goes on from there and it is all indicated in the summary sheet, and later on your Honor can refer, if you wish, to particular brokers and see how many he happened to sell.

That is in essence what this blue-back exhibit is. It is the least complicated of all the exhibits.

MR. PERSON: I can verify this information from statistics I have compiled which I have here, your Honor, through my own cutting up of the slips from the log and trying to paste them up. We don't have a computer, but I can make an attempt to verify that.

THE COURT: I don't think it takes a computer to do this, anyway.

Where is Young?

MR. KLEINBARD: What page?

THE COURT: Yes.

MR. KAPLAN: Page 5.

THE COURT: This doesn't appear in alphabetical order?

MR. KAPLAN: No, it is in chronological order and Young is on page 5 up from the bottom.

Young's orders to Mr. Strimple were not reflected because they are not in the Nabcor order log. These reflect only what Young sent to Nabcor.

THE COURT: Was there any appreciable amount of orders -- I know we talked about this that Sunday night, but I don't remember what we said.

Was there any appreciable amount of orders that had been given by brokers either to master brokers and then to master brokers dealing directly with dealers? Or given directly by the brokers to dealers?

MR. KAPLAN: There is no way to tell from any of these documents. The testimony in the depositions, however, was that Strimple and Turco were the only master brokers whoever approached dealers directly and tried to order cars. To the extent that Turco did, his records are combined with Nabcor because they kept the records in large measure together.

MR. PERSON: But not in the log.

THE COURT: You have information about total rp

purchases?

MR. PERSON: I don't have it here.

THE COURT: Of brokers and master brokers that did not go through Nabcor?

MR. PERSON: Only from what we have heard from Dale Strimple as one master and from Turco. He ran various things through his own logs, his own police books, which, some of which have not been picked by Nabcor because Turco in some cases dealt directly with franchised dealers.

THE COURT: In statistical language the term I want to know is the universe I am dealing with. I want to know the universe and I would like to know the total number of orders placed in this system. Maybe orders placed is not the right word for it, but this is a terribly helpful format to me.

The only thing is, is it a complete picture? And it seems to me that it is complete. What I am looking for is a complete picture on this as to the orders obtained by brokers which they gave to somebody.

2 If they got an order and kept it in their desk drawer, I can't worry about that. That is their own problem.

But if they got orders which they really tried to fill by either sending to a master broker, sending it to Nabcor, sending it to a dealer, then it seems to me that is an area of our concern.

MR. PERSON: The universe cannot be ascertained because of some exceptions that we have. One includes the Flanagan franchise in Chicago.

THE COURT: I can't worry about that.

MR. PERSON: Let me say what we do know about. General Auto Sales did not run all of the deals through Nabcor and we know the size of that is approximately 35, I would say. I think Mr. Kaplan will confirm that.

THE COURT: All of which were filled?

MR. KAPLAN: All of which were with Young.

MR. PERSON: Yes, right.

THE COURT: In other words, didn't General sell any cars of its own?

MR. PERSON: No, it was attempting to set up distribution and did not --

THE COURT: Aside from this attempting, as you say, did not sell one single car except to those orders --

MR. PERSON: I think it is a very limited number of cars but not substantial. Talking probably on one hand, five or fewer.

THE COURT: Let's get this. We do know of the orders obtained by Multi-Make back, Bolling said, the first month he was in business. That would be giving the month a little bit of an extension, let us say through August. Maybe there are documents, I don't know.

But those are whatever they were, seven or eight, and it is not too important.

Then we have the order that Mr. Strimple took from his daughter, right?

MR. PERSON: Correct.

THE COURT: I want to put aside the Multi-Make orders, put those aside for the minute, because we have had the story.

As far as any orders obtained by General from automobile customers, was there any besides the one from the daughter?

MR. KAPLAN: I think, your Honor, Mr. Strimple testified there were some. They have no record.

THE COURT: I think Mr. Person is saying it is on one hand.

MR. KAPLAN: It is not important, whatever it is.

THE COURT: All right, that is the extent of what you claim.

Now, the other orders that are reflected in that Exhibit E or in the testimony, those Buffalo orders and additional orders that may have gone through General were Mr. Young.

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MR. PERSON: I don't know if two other orders, one from Autolivery and from American Auto Brokers, I think on the books they ran separately and not through General. Those are two others already reflected in the log in the Buffalo area. But other than that all of the orders of General --

THE COURT: Except possibly two.

MR. PERSON: A negligent number.

THE COURT: The testimony is that they total around 35.

MR. PERSON: Approximately, yes.

THE COURT: And all filled?

MR. PERSON: Al Young had difficulties in getting cars from Nabcor. He was getting cars through the Econo-Car arrangement with Dale Strimple.

THE COURT: Were they all filed? As I recall his deposition, he said he got all the cars he wanted to get.

MR. PERSON: From General, yes. From Nabcor, no. He had placed orders with Nabcor but was not able to get them all.

THE COURT: Are they in the book?

MR. PERSON: Two are reflected and two are not.

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MR. KAPLAN: The others are out of the time period, your Honor.

MR. PERSON: It's '71, '72 and '73.

THE COURT: During the time period, did Young fail to get cars that he sought?

MR. KAPLAN: As far as we know, your Honor, he ordered 36 from Mr. Strimple and got all 36.

In 1970 the Nabcor order log reflects two orders from Mr. Young received by Nabcor as distinguished between Mr. Strimple, after Mr. Strimple went out of business, that is. There is no indication in the log as to what happened to them.

Mr. Young in his deposition testified that he got only one of several cars he ordered from Nabcor after Mr. Strimple went out of business.

THE COURT: I understand it now.

Let's go on.

MR. KLEINBARD: These books that you have, your Honor, foreach division, also I have a summary sheet. Each division is headed by a summary sheet.

THE COURT: Which one do you want to start with?

MR. KLEINBARD: Take the Pontiac one. Take the first line for a moment, 1966 in the summary.

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You will see that there are three orders placed in the log in 1966. Two orders are marked cancelled, the disposition of which we are uncertain about, but in any event the log recites cancelled.

THE COURT: Proceed.

MR. KLEINBARD: There is no serial number listed in the log,but we have located --

THE COURT: I understand it. You have located a serial number that you think matches the one --

MR. KAPLAN: Not quite, your Honor. This third column, the third and forth columns really, indicate what the log reflects about the automobile deliveries. The one on theleft which says serial number listed, that indicates that the log says that an order, which the log reflected was placed with Nabcor, was delivered and listed in the log is the serial number of the car delivered.

In the 1966 model year there were no such entreis for Pontiac. The righthand column which says serial number not listed, reflects entries for orders in the log which indicate that the automobile was delivered but does not list the serial number.

THE COURT: I see it.

MR. KAPLAN: So in 1966, as far as the log

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is concerned, there were three orders placed, two marked cancelled and one marked cancelled, and in the case of delivery the log reflects the serial number.

THE COURT: I'm with you.

The next column I understand.

MR. KAPLAN: I have to elaborate one step further about the last column, the one that says serial number listed.

We have been able through this computer program to pull together cases where we can identify the serial number of a car that was delivered, in many cases even where the serial number doesn't appear in the log.

The way that has been done is reflected in these backup sheets that are underneath. The log contains for all or most of the orders something called a SAPO number which is the number on Nabcor's purchase order. That number, with one or two exceptions, was a unique number.

Nabcor also had what are called deal folders in which they kept all the documents that pertained to a particular car transaction. All of the documents in all of the deal folders were entered into the computer. Before doing that every folder was assigned a number and every document within that folder was given the same number.

The computer was then able to match the purchase order number that appeared in the order log against all of the documents that came out of one or more deal folders that pertained to that car.

That deal folder may well have contained a manufacturer's invoice or a factory invoice or dealer invoice, or something which had the same purchaes order number. It matched it.

That invoice in turn would frequently lead to the serial number of the automobile, and by matching the purchase order number to the deal folder to the serial number we would come up with the serial number of the car.

THE COURT: All right.

Is that in a particular column?

MR. KAPLAN: If you will turn --

MR. KLEINBARD: Various backup sheets will show that.

MR. KAPLAN: Turn to the sheets underneath. The early ones don't have all the information. There are very sparce records on them.

MR. KLEINBARD: Look at some of the

Al Wilson ones.

MR. KAPLAN: Flip down to the middle of a bunch of Pontiac orders under the tab that says orders in PX450, you will see --

THE COURT: Give me a page. I'm on page 118.

MR. KAPLAN: These pages are not numbered consecutively.

THE COURT: I have got page 117 and then 118. I have got two pages consecutive.

MR. KAPLAN: You are lucky.

Down about halfway, on the lefthand side, give me the consecutive order number and then we can get to the same page.

MR. KLEINBARD: Whatever number you have.

MR. KAPLAN: I have number 301 in front of me. Can you turn to that? There in that order.

(Pause)

MR. KAPLAN: If Mr. Mescon can approach the bench, he'll find it for you.

THE COURT: I have it.

MR. KAPLAN: I'll explain this page and then explain how the match works.

The headings across the top to the right of

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the legend field descriptions are the nine classifications of documents, the data which was punched and put into the machine.

The first column is the order log and we picked up information that's listed vertically under that.

THE COURT: Is there a sheet for each car?

MR. KAPLAN: Yes.

The second column is the police book which is Plaintiffs' Exhibits 451 and 452.

The third column is the purchase agreement between the Nabcor broker and the customer, and that has certain information on it.

The fourth column represents the Nabcor purchase order.

The fifth column, the broker statement which is a document that Nabcor sent out and sent to the broker explaining the finance on the transaction; the manufacturer's invoice we have for some transactions and not for others. That GM's invoice to the dealer.

The next column, dealer invoice, is the dealer invoice to Nabcor.

The next column is the Nabcor invoice to its customer.

And the last column is Mr. Turco's invoices.

To go back to the first column on this transaction, the order log, you will notice the third line down, the SAPO number is 10058. If you look over to the fourth column where it lists the purchase order, it matches the purchase order for that automobile. It shows that the purchase order was made out to Bates Pontiac April 5. It happens in this instance to duplicate information in the order log, but that's not always true. Sometimes the only way of finding the dealer is by matching the purchase order numbers.

THE COURT: I think I get the drift for present purposes.

Is theee anything that contains a kind of narrative of the kind I was asking you last week? In other words, this really has practically the whole history on the sheet of how you derived the information, but out of each sheet there are probably two or three points that are of interest. I thought I outlined that Friday, the make of the car, you know --

MR. KAPLAN: It's all there on each sheet.

THE COURT: How does anybody deal with all of this?

MR. KAPLAN: These sheets are arranged for each make in the order of the Nabcor order number according to the log, so that if you want to find out what happened to any particular order in the log all you have to do is know what make of car was involved and you can look up the consecutive number and find out what was in it.

Then on the front of this book is the summary sheet which in gross terms indicates what happened.

THE COURT: Let's take it in gross terms. Let's take the Pontiacs.

MR. KAPLAN: There also, your Honor, is another document up there, a one-page document, headed "Analysis of Nabcor GM Transactions," which totals the figures.

THE COURT: We are back at the Pontiacs.

MR. KLEINBARD: You have 176 orders.

THE COURT: Where is that?

MR. KLEINBARD: It's on the summary sheet, and it's the total of the first column in your book.

THE COURT: Let's take it by year. Let's take 1969. As I understand it, there were on Exhibit 450, 37 orders and none cancelled, 35 of those orders

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where Nabcor records reflect deliveries and serial numbers listed in the Nabcor records.

MR. KLEINBARD: That is correct.

THE COURT: There are two instances where no disposition is reflected in Exhibit 450, and then you've got one instance of another order which was not reflected in 450.

MR. KLEINBARD: That's correct.

THE COURT: Your last two columns, total vehicles delivered --

MR. KLEINBARD: In this particular case you are adding the serials listed, which is 35, with the other deliveries, 36.

THE COURT: Out of a total really of 38?

MR. KLEINBARD: Out of a total of 37 in the log.

THE COURT: And one outside the log, but you don't know whether that --

MR. KLEINBARD: -- may have been one included in the log. That's the problem.

MR. PERSON: For your information it's useful to note that this one automobile in good likelihood is a located one, which was merely found and bought immediately.

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MR.KAPLAN: That column which says order deliveries --

THE COURT: We have a maximum amount of orders received by Nabcor in any form, according to this information, 38.

MR. KLEINBARD: Yes, your Honor.

THE COURT: And possibly that's a maximum. Maybe it was not 38. Maybe it was 37.

Out of that you've got 36 deliveries.

MR. KLEINBARD: Roughly speaking, your Honor, in the later years, I think with respect to all makes, you'll find that the difference between the minimum and maximum is not very considerable.

THE COURT: Let's look at --

MR. KLEINBARD: 67 would be a better one to give you an illustration of where there may be a variance.

You have 64 ordered, six cancelled, 19 delivered, for which we have serial numbers, 19 delivered for which the serial number is not listed in the log, and then 20 for which the log reflects no disposition and other deliveries were in the order of 33, so you have a minimum of 52, and if the serial number is not listed, not duplicated in the 33, in other words, if

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that righthand column of 19 is not included in the 33 but added to it, you get 71, and we have no way of knowing, so that's where you get your range.

It is for the most part in the first two years that you'll find that in each division. As you get on to the later years there is a more complete identity of number.

THE COURT: That's quite a discrepancy. I think there, Mr. Person, for 1967 Pontiacs, are you talking about model year?

MR. KAPLAN: Yes.

THE COURT: You've got it labeled model year?

MR. KLEINBARD: Yes.

THE COURT: Mr. Person, what about model year 1967 Pontiacs? What are you going t- claim is the number of refusals to sell?

MR. PERSON: I can't break it down.

THE COURT: What I'm told by General Motors counsel is that after an analysis of all these records that are reflected in thse individualsheets, you find no explanation for what happened to 20 orders; is that right?

MR. KAPLAN: That's possibly right.

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All that the 20 represents is that the order log does not say what happened to them. It may be that 20 of those 33 other cars that we can't tie into the order log because there is no corresponding number -- it may very well be the 20 -- they may have gotten every one of them. There is no way that we found of finding out.

THE COURT: As far as Nabcor records, the column that says orders in Plaintiff's Exhibit 450, for which Nabcor records reflect delivery, that is 38 cars for 1967 model year Pontiacs, right?

MR. KAPLAN: Yes, your Honor.

THE COURT: You've got specific records of cancellations of six.

Here's one problem I see on the face of this. Where there is a delivery reflected you refer to all Nabcor records, not just to 450. That's the columns --

MR. KAPLAN: No.

THE COURT: Wait a minute. It says orders in Plaintiffs' Exhibit 450 for which Nabcor records reflect delivery. You refer to Nabcor records in toto.

Now, where you have cancellation or no disposition you simply refer to Exhibit 450. In other words, what I am left wondering is, is there something in the total Nabcor records which show something besides delivery? Would it show cancellation? Would it show a refusal of the dealer to sell? You don't say that.

MR. KAPLAN: I have no idea.

THE COURT: But you have an idea when it came to deliver. In other words, when it was delivered you referred to all Nabcor records.

MR. KAPLAN: Your Honor misunderstands that that represents. I did try to explain it and I'll try again.

Where there is an order for a 1967 Pontiac listed in Plaintiffs' Exhibit 450, and Plaintiffs' Exhibit 450 either says the car was delivered or by connecting the purchase order number to another specific document demonstrates that the car was delivered, it's reflected in one of these two columns headed.

There may very well be all sorts of other things that may relate to that order. For example, there may be no indication of what happened to the order in Plaintiffs' Exhibit 450. There may very well be, and undoubtedly are in this case, dealer invoices for '67 Pontiacs to Nabcor for which there is no way for us to connect to any specific entry in the order log because there are no corresponding serial numbers or order numbers or anything. But in fact it may be that car. The only way to deal with that is to deal with that part of it in gross, which is the 33, the figure 33.

THE COURT: I don't think you are getting my point. Where something in the Nabcor records shows delivery, something, through the matching process that you went through you reflect that on the two columns under the heading orders in PX450 which Nabcor recor-s reflect delivery.

In other words, if somehow the delivery is reflected in the total batch of Nabcor records, you match that up and reflect delivery here, but let's suppose that the total match of Nabcor records reflects something besides delivery.

Let's suppose it reflects that the dealer refused to sell or something else. Then it is not reflected in any column here.

MR. KAPLAN: That's not so.

THE COURT: Where is it reflected?

MR. KAPLAN: If it says cancelled in 450 it is here.

THE COURT: You don't refer to anything outside of 450.

MR. KAPLAN: If I can have a chance to tell you what is here this might become clearer.

The sheets underneath show precisely what information we collected. We collected information from eight different types of documents. We collected six or eight particular pieces of information from each of those documents. It is all spelled out right here.

I am ready to concede right here and now that if there is a scrap of paper somewhere in Nabcor's correspondence file that says a car was cancelled, or if Mr. Maiorana wrote letters to his brother saying cars were cancelled it is not reflected here. All that is here is the transaction documents, the right or nine categories that we have specified are here, and the eight or nine pieces of information ofthose documents which we say we collected.

I don't know what is there besides that. If we were to go back and enter into this thing absolutely every written comment in the Nabcor records, we would be here for the rest of the time.

THE COURT: I'm not asking that.

MR. KAPLAN: To the extent there were records we could identify that looked like records that might be collected in a systematic way in the regular course of business, we selected those that we needed to use.

THE COURT: I wish you could understand my point. On its face this chart seems to be incomplete in that it may be -- look at the headings.

MR. KLEINBARD: It's the headings that aer probably misleading.

THE COURT: Call the first column the model year column. That's the first column on the left.

Look at column 3 from the left which says orders marked cancelled in PX450. I immediately wonder if there is some other document -- I'm not talking about some fragmentary memo. I mean a business document of the kind included in your individual sheets, the order log, the police book, the purchase agreement, the purchase order, the broker's statement and so forth.

If there is anything there that reflects cancellation -- you've only got six orders where PX450 reflects cancellation, but are there any of the other kind of standard transaction documents that reflect cancellation? I can't tell from your heading. I don't know.

(Continued on next page)

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MR. KAPLAN: We don't profess to say one way or the other on that subject, and I will tell you the reason.

The reason for it is on the document, the purchase agreement for example, where the customer signs up to order the car from the broker, one I presume would not mark "Cancelled" on the ordinary course. I don't think there are any such documents.

Purchase orders occasionally were marked "Cancelled," but we didn't pick that up. It should be reflected in the log and, in any event, all of the purchase orders are entered in here and where there is an odd purchase order that doesn't connect up the car, it is here.

The police books purport to represent only completed transactions, so there is not going to be anything there, and it isn't there.

There is not on the GM invoice any indication of a cancellation, nor would there be on the dealer's invoice to Nabcor.

THE COURT: In other words, if we want to find out whether there is a reason for either a cancellation or if we want to check into 20 or so orders where Plaintiffs' Exhibit 450 reflects no disposition,

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then this is a matter which -- at least the problem areas are isolated for somebody to go into if they want to go into it. If they don't want to go into it, they don't want to go into it.

I think what I would like to do is get the jury in. Really, on the face of it this is a remarkably helpful thing and --

MR. KAPLAN: There is a summary of this.

THE COURT: I think we can work with this further, and I would like to say that I would like to go ahead with the cross-examination. We have the documents, Mr. Person now has the documents, and you have exchanged what you have and I really can't ask for anything more, and I really very much appreciate this.

MR. KAPLAN: Before the jury comes in, could we deal with the motion to strike?

THE COURT: Do you have the record? All right.

Mr. Person, you look and get this somehow.

MR. KAPLAN: We are dealing with 2621 through 2623.

Specifically, your Honor, I move to strike that sentence on 2621 where it says, "The dealers were trying," and also --

THE COURT: Let me get the context of this. You move to strike what?

MR. KAPLAN: 2621, line 3, and following, starting with the words, "The dealers were trying to sell the cars."

THE COURT: To the end of that answer?

MR. KAPLAN: To the end of that answer.

THE COURT: What else is covered by your motion?

MR. KAPLAN: Page 2621, lines 11 and 12, starting with "And he said."

THE COURT: The second branch of the motion is to strike the words starting "And he said"?

MR. KAPLAN: Right.

THE COURT: What else?

MR. KAPLAN: Finally, page 2623, lines 9 through 18.

THE COURT: Anything else?

MR. KAPLAN: That is all, your Honor.

THE COURT: All right, Mr. Person.

MR. PERSON: I think he opened up the subject matter with respect to English and the conversations about English and the discussions with the dealers, and that is concerning, in other words, how General was trying to obtain cars.

I think all this is part of the area that was being discussed.

THE COURT: He was asking the question at the bottom of page 2620, and that is, "What did you tell him?" And the "him" refers to --

MR. KAPLAN: I think that is a typographical error and it should be "them."

MR. PERSON: To Clements-Gillogly.

THE COURT: It would refer to Clements-Gillogly?

MR. KAPLAN: I believe it was more general -- you are quite right, it is Clements-Gillogly in this case.

I am sorry, I read the context again and it is to dealers generally whom he was claiming he ordered with the Econo-Car subterfuge.

MR. PERSON: That was an inclusion of Clements-Gillogly in line with the prior testimony of his.

THE COURT: I don't think that the witness meant any harm, but the fact is that he got beyond the question and started, as I now interpret it, to talk about a narrative of other things that were not covered by the question, and I am going to grant the motion to strike.

Now, I think that we again, as we have in the past had so many times, we have a very difficult row to try to decide the exact path.

We have from the very outset of the trial tried to take the position that hearsay explanations or testimony -- let me go back because this presents a problem --

MR. PERSON: It is a defendant, your Honor.

THE COURT: Yes. We, and when I say "we" I am talking about the Court really, I have taken the position and this position is in agreement with the defendant, that witnesses such as Mr. Strimple or Mr. Maiorana cannot testify as to what dealers told him were their reasons for refusing to sell, because this is so crucial to the case and any possible non-hearsay use, and I don't really see a non-hearsay use, is outweighed by getting this hearsay testimony in.

In other words, proving the fact of the reason, proving the fact or alleged fact of some dealings with General Motors by this hearsay testimony.

This is the prime use that such testimony would be put to and, in my view, I still adhere to it, it is very, very undesirable and improper to have these important issues covered by that hearsay testimony.

On the other hand, I repeat what I said many times, to take this path creates a difficult record. It means that transactions are testified to in an incomplete fashion and it may be there is some non-hearsay use which these conversations could have.

MR. PERSON: It is a defendant, your Honor. Clements-Gillogly is a defendant.

THE COURT: But the testimony went beyond Clements-Gillogly. I am just trying to -- let me finish --

MR. PERSON: I am sorry.

THE COURT: Because the testimony at the top of page 2621 is just Clements-Gillogly, it is phrased in terms of dealers.

Now, the thought did come to me, and that is if there is some non-hearsay relevance of this testimony, I want to know it, and this will take some very close analysis.

For instance, if as a result let us suppose some broker told Mr. Strimple that he couldn't deal with Mr. Strimple unless Mr. Strimple had a fleet

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certificate.

Let us suppose that led Mr. Strimple to go and get a fleet certificate.

Now, it could be that the statement of the broker about a fleet certificate might have both a hearsay and non-hearsay relevance. The non-hearsay being just the fact of telling this to Mr. Strimple as influencing Mr. Strimple's actions in some way.

I know this is a difficult problem of analysis and a kind of fine one, but I am just telling you, Mr. Person, that I am not trying to make rulings which end this trial with a lot of errors. That is not my desire and if there is some point which makes a conversation relevant for some legitimate reason under the rules of evidence, I want to know it and it is up to you to tell me.

2 But right now I have not been apprised at least in connection with Mr. Strimple of anything that would make this kind of testimony that is at the top of page 2621, et cetera, I haven't been apprised of anything but a hearsay use, and therefore I will exclude it.

It was also non-responsive and I don't think it is a very orderly way to have it sort of slip in.

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I am not criticizing Mr.Strimple because he naturally wouldn't be aware of all those problems. But I think for the sake of good order I will strike it.

Now, if there is some legitimate reason why such testimony should come in, in response to specific questions, and if there is a reason for it, you have a right to get that evidence and present whatever you want, but I am striking the testimony because as given it is non-responsive and I don't think it is an orderly way to get it.

I made a mistake in pursuing it and not granting Mr. Kaplan's motion when he made it to strike and so I am granting the motion to strike because of non-responsiveness and hearsay problems, without prejudice to your attempting if you want to try to lay a foundation for this at some other time in an orderly way, you can try to do it at a later point.

Let's bring the jury in and I will instruct them that the motions are granted.

MR. KAPLAN: Thank you, your Honor.

(Jury present.)

DALE STRIMPLE, resumed.

THE COURT: Ladies and gentlemen, you recall that at the end of the session yesterday there was certain testimony that I asked to have reread and it was inquiring about, and I think that I was mistaken in pursuing that because what I didn't realize was that it was exactly the kind of hearsay testimony which we have been trying to exclude, and Mr. Strimple I don't think realized the problem and I didn't realize the problem at the moment.

But we will rectify it and, for the record, I want to say that the testimony, and I think I will have to read this testimony, but I think you will get the point at the top of page 2621:

"The dealers were trying to sell me cars, they could not sell me cars unless they could justify me as a leasing company, and I used it so I could get the automobiles."

That testimony is stricken because again it is Mr. Strimple testifying exactly as to what the dealers told him as to their reasons, and you know the problem about that.

Then there is some testimony on the same page, and it quotes Mr. O'Donnell saying, "What Mr.

English doesn't know don't hurt him," and that is stricken.

Then there is testimony that Mr. Strimple gave in response to my question and Mr. Kaplan objected to my question but I pursued it really without reflecting on it sufficiently. But I will read that testimony:

"They referred back to a fleet number which they gave to leasing companies and a person who bought so many cars in a year could get this fleet number.

"They all stipulated they wanted to sell me automobiles and they agreed to and then they couldn't.

"So then they -- Hennessey, who had a leasing number, introduced me as his associate, and then I was able to get automobiles so long as I was Hennessey's associate in this."

That is stricken.

Go ahead, Mr. Kaplan.

CROSS EXAMINATION CONTINUED

BY MR. KAPLAN:

Q Mr. Strimple, you said yesterday that you used the Econo-Car as a subterfuge to get automobiles, is that true?

A Yes.

Q You did use it as a subterfuge?

A Yes.

Q Econo-Car did not buy automobiles purportedly for its leasing business and then permit General Auto Sales to sell them, true?

A True.

Q And when you ordered cars in the period when you claim you were using this subterfuge,you did not tell the dealers that the cars were for Econo-Car, true?

A No, not per se.

Q I show you Plaintiffs' Exhibit --

THE COURT: Would you be good enough to read those questions and answers that have been given so far, Mr. Reporter?

(Record read.)

THE COURT: Not per se?

MR. PERSON: I have not precisely.

THE COURT: Not precisely?

THE WITNESS: Yes.

THE COURT: I don't understand, what do you mean?

THE WITNESS: The dealers assumed --

MR. KAPLAN: Objection.

THE COURT: Sustained. Don't tell us about their state of mind.

THE WITNESS: I used my association with Econo-Car to the dealer to get automobiles.

BY MR. KAPLAN:

Q You told the dealer that the automobiles you ordered for business as distinct from those you ordered for Econo-Car's business, were for General Auto Sales, true?

A At the time of billing.

Q But one time or another you told them, right?

A At the time they billed me for the car they would ask who do I want this car, the invoice billed to.

Q I show you Plaintiffs' Exhibit 531 for identification. These are invoices from Clements-Gillogly Chevrolet to General Auto Sales, true?

A I am looking.

Q We are waiting. Take your time.

A Yes, these are invoices from Clements-Gillogly to General Auto for automobiles, yes.

Q Do you claim that those transactions took place during the period when you were using the Econo-

Car as a subterfuge?

A Yes.

Q Everyone of those invoices is made out to General Auto Sales, true?

A Yes.

MR. KAPLAN: I offer it in evidence, your Honor.

MR. PERSON: No objection.

THE COURT: What number?

MR. KAPLAN: Plaintiffs' Exhibit 531.

xx (Plaintiffs' Exhibit 531 received in evidence.)

THE COURT: Do you know what are the dates these run from?

MR. KAPLAN: I believe they run from April of 1968 to some time in 1969. I am not certain.

THE COURT: The earliest I see is April 4, 1968, an invoice that is dated that date, and the last one -- no, March 30, 1968, and the last one I think is November, 1969.

MR. KAPLAN: You may have these. I think you will find those invoices correspond to every Clements-Gillogly sale on Defendants' Exhibit E (handing to jury).

Q Mr. Strimple, yesterday you testified that when you spoke to dealers about ordering 200 to 400 new Chevrolets, you had five to seven orders for specific cars with you.

You were asked whether your placing of those orders with the dealer was contingent on the dealer agreeing to sell you the 200 or 400 cars. You said it was not. Was that testimony true?

A Yes.

Q You still claim today that the placing of those orders that you took around when you talked about the two to four hundred cars was not contingent on the dealer agreeing to sell you 200 or 400 cars, right?

A That is true.

Q Mr. Bolling was with you when you went around about the two to four hundred cars?

A Not always.

Q He was at Dengler, true?

A Yes.

Q And Laks?

A Yes.

MR.KAPLAN: Your Honor, at this point I would like to offer in evidence a passage from the statement which Mr.Bolling gave to Mr. Watson, counsel for Clements-Gillogly, on June 23, 1967, page 30, line 6:

"Q But now you as the distributor wanted to acquire your sources?

"A Correct. Locally, you know, it has its advantages, you know.

"Q What did you do to make these contacts?

"A Went out, you know, solicited and contacted the different dealers in Buffalo, West Dunkirk, all over the county, all over the counties. I mean, we started crossing ones out in working out a net work operation as limited as possible."

Page 31:

"Q By that many you were talking about what at that time?

"A We were in a position to guarantee anywhere from, you know, 45, 50, 250 cars a year."

Finally, page 32:

"Q For instance, when you first went to the first dealer, whoever he was, to talk about this annual arrangement for this rather large order of automobiles at that time, you didn't want to order any specific automobiles, but you were hoping to work out an arrangement whereby --

"A We did have seven orders.

"Q Seven orders, okay.

"A Seven orders that we carried with us and we were willing to place as soon as they signed the commitment supplying us automobiles."

Q Mr. Strimple, do you still maintain that the placing of those five to six orders was not contingent on the dealer agreeing to fill a large quantity of Chevrolets?

A I certainly do.

MR. KAPLAN: No further questions.

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:Q Mr. Strimple, the written order for your daughter's car is dated September 21, 1967. I think that's in the record now.

Did you t-ke a verbal order for the car before that date?

A Yes.

Q Do you have any way of placing the start or the beginning of your association with Econo-Car?

A Do I have any way?

I tried to absolutely establish, through different things that I had done in time elements, a date of when I became first associated with Econo-Car.

Q What were the results? Did you establish a date?

A I established it through the fact of a representative that was trying to establish me as a distributor for Amway, a fellow by the name of Bob Smith that worked at Sears & Roebuck, and I ran into him while I was down to an automobile dealership. He asked me to give him a ride back to where he was picking up as daily rental car. He was picking it up at Econo-Car. Thatwas in the winter of '67. There was a lot of snow on the ground.

Q Do youhave any knowledge whether this

occurred before or after you visited with the United States Attorney?

A I think this was before.

Q Do you recall when you visited the United States Attorney?

A I think this was before.

Q Do you recall when you visited the United States Attorney?

A I believe it was in February of '68.

MR. KAPLAN: It's stipulated: February 1st.

Q Do you have any information on the appearance of a B&D report on Nabcor in Defendants' Exhibit WW, which is --

MR. KAPLAN: I ask Mr. Person to rephrase the question.

Q Were you an officer of General Auto Sales and Leasing?

A Yes.

Q Are you familiar with Exhibit WW?

A Yes. I seen it yesterday.

Q Did ou obtain any information concerning the appearance of a Dun & Bradstreet report on Nabcor?

A When I was talking --

Q Is it hearsay? Is it somebody who told you where the D&B report came from?

A Yes.

Q Somebody affiliated with General?

A Yes.

MR. PERSON: Do you wish to object to letting him state what he knows?

MR. KAPLAN: Yes.

THE COURT: When did you obtain the information?

THE WITNESS: Yesterday.

THE COURT: If it was something he had at the time that he had evaluated the D&B, that would be something different. But what he learned yesterday from somebody else --

THE WITNESS: It was not me that evaluated--

THE COURT: The objection is sustained.

Q You testified that you discussed with various dealers in the Buffalo area your desires of purchasing 200 to 400 cars from the Buffalo dealers. Did you discuss with any of these dealers when delivery was to be obtained by General or Nabcor?

A Yes. Over a period of a model run.

Q A model run you are saying?

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A Yes.

Q Meaning in the course of how long a time?

A Well, the '68 Chevrolets come out in September or October of '67; the '69s would start roughly a year later, and your orders would go through this model run, which is rougly a year.

Q Insofar as the five orders were concerned, could you state when you sought delivery on the five to seven orders?

A They would be delivered as soon as they came in.

Q How much money was needed by Nabcor or General to buy five cars at one time?

A In most instances it would not require any money at all to order a car.

Q In other words, what was the practice of ordering automobiles in terms of whether any deposit was required?

A Some dealers would require a deposit of $50 or something for the paperwork involved in ordering an automobile. Most of your finance companies in this sort of thing initiated floor plans to pick up the cost of automobiles until the customer could pay for them and they would be paid off. As far as actual cash needed for an individual company, in many instances they didn't require any money. The entire cost of the new automobile to the factory would be picked up by the finance company.

THE COURT: Are you indicating that that related to you?

I thought he was asking how much money you would require to buy five cars. Did your answer relate to a dealer or to you?

THE WITNESS: I was a dealer.

Q In the Nabcor system, to buy five cars after the order had been placed and the cars were in the process of being delivered, how much money would be needed to buy five cars at one time, to take title?

A Probably $15,000.

Q When would Nabcor or General expect to get that $25,000 back?

A Immediately upon delivery of the cars to the customers.

Q Would you then be in a position to buy an additional five cars?

A Yes.

Q What would determine how long it would take before five additional cars could be purchased with a payment in cash?

A Read the question.

(Question read)

Q Was there any length of time that it would take from the time that five cars would be bought and then resold by General or Nabcor and an additional five cars could be bought and resold with the same $15,000? Was there any length of time?

A The normal ordering time to actual delivery day on automobiles would be four to six weeks.

Q You didn't need the money to order?

A No. They didn't all come in at the same time if you were ordering five makes of automobiles; so that in many instances you would be paid for several of them without needing additional money to pick up the ones that were coming in yet.

Q Assuming you bought five and resold them and at some later time you bought and resold, what's the closest that such transactions could take place with the same $15,000?

A You could use it as many times as you needed to.

THE COURT: I don't understand this.

THE WITNESS: $15,000 to purchase cars --

THE COURT: Just a second.

It seems to me the best way to get this is just to ask what the mechanics were.

Did General actually take orders from individual customers and fill those orders?

THE WITNESS: Yes.

THE COURT: We talked about this before the jury was in. Isn't it stipulated that thenumber of orders that General took from customers, aside from taking them from other brokers like Young, that the number of orders that General obtained from car buying customers for individual cars was five or less? Isn't that what you stated before?

MR. PERSON: The number of orders that were placed by General, I believe, was a very minimal number, other than the ones that General got from its brokers.

THE COURT: That's what I'm talking about. These would have been orders where General got a customer, an order from a customer, and placed an order with some source of supply; that was minimal, five or less?

MR. PERSON: I believe that's right. If you want the witness to confirm it --

THE COURT: To the extent we can stipulate we don't have to rely on memory.

Is that stipulated, Mr. Kaplan?

MR. KAPLAN: It's agreeable to me, your Honor.

THE COURT: Getting back to the mechanics, to the extent you took orders, and I mean General when I say "you," you were not accumulating an inventory, I take it?

THE WITNESS: No.

THE COURT: How would the handling of the money, the payment, work?

THE WITNESS: I would issue the dealer a check for the car.

THE COURT: Would you issue it out of your own money or would you get it from the customer?

THE WITNESS: I would issue it out of my own money, or if the customer wanted to pay in advance for an automobile when his car came in he would come in and give you a check for the car and you would use his money to pick the car up. You could do either.

THE COURT: How did you do it?

THE WITNESS: I issued my own check and I have had customers -- I have to be careful. I have been in the automobile business for so many years I keep forgetting I'm talking about a specific situation.

THE COURT: Focus with respect to General.

In the five or less instances where you actually placed orders for cars on behalf of General's customers, how did you do it?

THE WITNESS: In most instances I issued the company check for hte car and collected the money from the customer.

THE COURT: How quickly would you collect?

THE WITNESS: You collect immediately.

If I went down to Clements-Gillogly today and issued a check for the automobile, brought the car back to my dealership, the customer would have already been contacted to arrange a time for his delivery, and payment was immediate.

Q Would you deposit the payment?

A Sure.

Q Then you would have theoretically more money on deposit then -- in other words, was there any note? Was there any --

A It takes a couple of days for a check to go from whoever you issued it to to clear your bank, or vice versa, but there was no --

Q When the check finally did clear you were then in position to buy an additional five cars?

A Sure.

Q How did this differ from the capital requirements of a franchised dealer?

A Well, a franchised dealer is required to have so many hundreds of dollars for each anticipated car sold, and anybody that is going to sell any volume of cars requires, under a regular franchised system, a great deal of money, because they are floor planning automobiles, they have a big service department, they have big showrooms, they have heavy advertising, and they have all types --

MR. KAPLAN: I move to strike the speech, however entertaining.

THE COURT: I think we have enough on the dealers. I think the jury understands that they have an inventory and it's a completely different picture.

MR. PERSON: I'm only trying to work to a point that was made by Mr. Kaplan.

THE COURT: Get to it.

Q In light of what you said then, Mr. Strimple, how much money would be needed by Nabcor to purchase 200 cars in the course of a model year?

MR. KAPLAN: I object, your Honor, because to answer it there has to be so many assumptions. For example, you could purchase 200 cars in the course of a model year on the same day. I object to the form.

THE COURT: One could simply take the price on the assumption that he was getting the car for wholesale plus a slight markup. One could simply take the wholesale price of an assortment of General Motors cars and do the proper multiplication and come up with the amount of money.

What does that mean?

MR. PERSON: I'm trying to point out that there was no need to have a half million or a million dollars in Nabcor's pocket to be able to buy 200 cars.

THE WITNESS: If you had $3000 you could deliver 200 cars in a year.

MR. PERSON: That's what I was looking for.

Q Mr. Kaplan stated --

A Because of the mechanics you described, yes. You deliver one and get the money and get another one. You could deliver cars dayain and day out.

MR. PERSON: Mr. Kaplan stated that Nabcor had bought only four cars in 1966. I would like to point out that the police books show that for the calendar year 1966 Nabcor purchased about 60 cars. This is Exhibit 452.

MR. KAPLAN: Your Honor, we could do it now or on recross, but Nabcor has interrogatory answers.

THE COURT: If the distinction is model year versus calendar year --

MR. KAPLAN: I'm not sure that distinction is made, your Honor.

MR. PERSON: The police books in evidence show there are approximately 60 cars for the calendar year 1960 and I offer the police books to anybody who wishes to add it up.

THE COURT: I think your testimony was that Mr. Maiorana didn't tell you and you didn't ask how many cars he sold in 1966, whether it was a model year or the calendar year.

THE WITNESS: Mr. Kaplan volunteered the information.

THE COURT: Did you discuss that with Mr. Maiorana at the time?

THE WITNESS: I do not think I did.

MR. KAPLAN: Your Honor, if I may, at this point, Nabcor's answer to interrogatory No. 21 of

General Motors' first set of interrogatories, which was sworn to by Mr. Maiorana as true June 1, 1972, reads as follows, paragraph 21B.

Nabcor has been engaged in the selling of new automobiles. The number of new automobiles by manufacturers sold by Nabcor in each year in which Nabcor engaged in the business of selling new automobiles: For [illegible] it was three General Motors and one Chrysler.

MR. PERSON: The ambiguity I'm trying to correct -- and both of us fell into it -- is the difference between a retail sale by Nabcor and sales to the Nabcor brokers.

Is that correct?

MR. KAPLAN: No.

MR. PERSON: I go by the police book.

THE COURT: Read that again.

MR. KAPLAN: Nabcor has been engaged in the selling of new automobiles. B, the number of new automobiles by manufacturer sold by Nabcor in each year in which Nabcor engaged in the business of selling the automobiles: 1966, three GMs and one Chrysler.

THE COURT: We had a tabulation that we have used before. Was that based on those interrogatory answers?

MR. KAPLAN: Yes, sir.

THE COURT: There is an exhibit.

MR. KAPLAN: Your Honor is right.

THE COURT: Let's see what that says.

MR. KAPLAN: It's what I just read.

THE COURT: I would like to look at Exhibit XX.

MR. KAPLAN: Here it is, your Honor.

(Pause)

THE COURT: We have used this, Mr. Person. If this is not accurate you better seek to amend your client's answer. This has been something we have had. As far as I am concerned I have been relying on it and I think I'm entitled to rely on it.

MR. PERSON: It might be for the model year. It might have been compiled with that thought in mind.

THE COURT: Let's take this up at a recess. I think it's very important to have this information correct. If there is any correction that should be made we'll make it.

Until there is a correction that answer is your client's representation.

MR. PERSON: The police book is in evidence.

That probably would bear out what I have said.

THE COURT: Let's proceed.

MR. PERSON: Mr. Kaplan also indicated that Nabcor had made false representations about Nabcor exploding all over the place and selling a lot of franchises. The document through August '67, the number of franchises sold, was 81.

THE COURT: What are we doing now? Are these questions for the witness?

MR. PERSON: I'm trying to use the record to create -- I thought we had just referred to it earlier in the morning but I can't find it.

THE COURT: We are bogged down. What do you want to do?

MR. PERSON: I wanted to be able to refer to the number of states in which franchises were sold by the time that Mr. Strimple was being sold his franchise. I don't have the document before me.

I have the document here.

(Pause)

MR. PERSON: I would like to offer this in evidence. This is Exhibit 692. It's a list of Nabcor franchisees with the dates of the franchises.

THE COURT: Is there an objection?

MR. KAPLAN: It's cumulative and I don't know the relevant time period.

MR. PERSON: Striking the relevant time period.

THE COURT: You'll have to fix up the exhibit then.

MR. PERSON: I'll delete it beyond the relevant time period.

THE COURT: Any objection?

MR. KAPLAN: It's cumulative of Defendants' Exhibit X5.

MR. PERSON: Except it has an address and the other one did not.

THE COURT: That's helpful.

It will be received, except for the material outside the time period.

(Plaintiffs' Exhibit 692 was received in evidence)

MR. PERSON: Plaintiff's Exhibit 692 shows that by the end of August 1967 Nabcor had sold 81 franchises in at least ten states.

BY MR. PERSON:

Q Mr. Strimple, when you spoke with dealers in the Buffalo area during 1967, did you tell them you were a leasing company?

A No, I did not.

Q Did you tell them you were a reseller?

THE COURT: You are talking about talks with the dealers?

MR. PERSON: Yes, your Honor.

A I told them I was a Nabcor distributor.

Q Did you have any discussions with dealers whether it would be possible for them to deal with you?

A Yes, I did.

Q Can you recall any such dealer?

A The first one that I talked to of course was Kem Dengler of Dengler Chevrolet and Oldsmobile, and I talked to him about purchasing for our system across the country 200 automobiles, and of course Mr. Dengler agreed to sell.

MR. KAPLAN: Objection, and I move to strike what Dengler told him; and, furthermore, the whole answer is unresponsive.

THE COURT: I'm denying the motion.

This is repetitious. Do you have a particular thing you are asking about? Come to that.

Q I believe you agreed with Mr. Kaplan that whenyou went to dealers in 1967 you knew they would not like it if they knew you were going to be selling cars in Buffalo and I believe you had agreed to something like that. I am wondering what dealers you are referring to.

A Mr. Dengler, which was located at least, I guess, 50 miles outside of Buffalo.

Q Were any of the dealers who agreed to sell to you the dealers that you believed would not like it if you were selling cars in Buffalo?

MR. KAPLAN: That's a pretty hypothetical question.

A No.

THE COURT: I'll sustain an objection.

You show me where in the record such as that appears, that he agreed.

MR. PERSON: I have notes on it, your Honor. But rather than take up the time to try to demonstrate where in the record that might be, I'll proceed to something else.

THE COURT: All right.

Q Were you doing to be competing with dealers from whom you were attempting to obtain automobiles in Buffalo?

A Only to a very small extent.

Q Why was that?

A Because we were selling all types of cars and the particular dealer, for example, that was selling Chevrolets was already experiencing the competition from all the rest of the dealers, and we were also, of course, shipping cars all over, so that the dealer in a particular area is not worried what a dealer 100 miles away is doing.

Q Mr. Kaplan indicated that a number of persons had been requested to appear or subpoenaed to appear before the grand jury investigation that had been convened in Buffalo in the Western District of New York during March of 1969.

Are you aware of any investigation that was taking place concerning General and Nabcor prior to the date of commencement of the grand jury investigation?

A Yes, I am.

MR. KAPLAN: Voir dire, your Honor.

VOIR DIRE EXAMINATION

BY MR.KAPLAN:

Q What is the course of your information? Is it things other people told you?

A No. No hearsay evidence.

MR. KAPLAN: Thank you.

BY MR. PERSON:

Q Did you yourself have any communications with anyone in connection with an investigation?

A Yes, I did.

Q Do you recall the first time that --

A I believe it was in early 1967.

Q Was that at your request or at somebody else's?

A I requested it in Buffalo, and during that 1968 period I had two to three interviews with particular investigators that were conducting a survey of the information.

Q Did the investigation continue into 1969 with you as far as you were concerned?

A I believe it did.

MR. PERSON: I have various documents here, your Honor, which reflect what the Justice Department was doing in connection with the Nabcor and General matters starting with February 2, 1968, going into 1969.

I would like to show them to Mr. Kaplan and see if he will object to their introduction.

THE COURT: All right.

will certainly help you do it.

MR. PERSON: Could I find out through you if they have obtained any documents which they haven't given to me? Because they haven't produced any, and I can't believe that --

THE COURT: That is very big and general request. You think about that and talk to them and if there is anything specifically you want help on, I will certainly help you.

(Recess.)

(Jury present.)

THE COURT: Do you have anything more from Mr. Strimple?

MR. PERSON: Yes, I do.

THE COURT: I have that Exhibit E with the little note at the bottom. Can somebody find the original Exhibit E because it should have an amendment to reflect the order of the Paul Batt Buick car.

(Handed to Court.)

BY MR. PERSON:

Q Mr. Strimple, had Paul Batt on the Electra that was taken back by the factory, did anyone at Paul Batt Buick say what type of alleged malfunction there was with the car?

A No, they did not.

Q Did anyone make any statement about how many times this had occurred to their knowledge, in their history?

MR. KAPLAN: He already testified to that, your Honor.

Q Do you recall?

A Yes. Said it never, they had never experienced a similar experience.

Q Is there any procedure used in the automobile business which you would be able to repair an automobile that does arrive at a dealership in any kind of malfunction state?

MR. KAPLAN: I object to that.

THE COURT: Sustained, too general.

Q Do dealerships have service departments, franchised dealerships?

MR. KAPLAN: Objection.

THE COURT: We know they do.

Q If an automobile arrives at a franchised dealership needing repair, is that repair covered by a warranty program?

A Yes, it is.

MR. KAPLAN: I suppose it depends on the repair. Suppose it fell off the trailer?

THE COURT: I think the problem is: Isn't it true --

MR. KAPLAN: The problem is that obviously there are some repairs a dealer can make and some a dealer can't make, and nobody knows what this was.

MR. PERSON: We'll be willing to agree with that statement.

THE COURT: Fine.

MR. PERSON: I offer Exhibits 694 and 695.

MR. KAPLAN: No objection to 695. 694 is objected to.

THE COURT: May I see them both, please.

(Pause)

THE COURT: The objection to 694 is sustained.

x (Plaintiffs' Exhibit 695 was received in evidence)

Q 695 in evidence represents what, Mr. Strimple? (handing)

A That represents that an automobile was purchased from Bob Baines Chevrolet and was asked for under Econo-Car Leasing, and then when the car came in they asked me to who did I want it billed to and I said General Auto Sales, so they were willing to give me the car and they billed it the way I asked it to be billed.

MR. PERSON: I show this to the jury.

This exhibit has Econo-Car crossed out with the name General Auto Sales and Leasing,and the address of General Auto.

MR. KAPLAN: What's the date of the invoice?

MR. PERSON: 1969, March 17.

Q Do you recall having any discussions with any dealers concerning a fleet certificate?

A Yes, I do.

Q Could you identify which dealers you had such a discussion with?

A One of them was Bob Baines Chevrolet. One was Kem Dengler Chevrolet and Oldsmobile. Another was Hamister-Gillogly Chevrolet.

Q I would like to show you Exhibit 694 for identification. Does that help you in identifying when you spoke with at least some of the dealers you have mentioned?

A Yes.

Q Can you tell me approximately when you spoke with Kem Dengler Chevrolet concerning a fleet certificate?

A I talked to Mr. Dengler about the fleet certificate at the time that he said --

MR. KAPLAN: I object. Could we just have the date?

THE COURT: He asked about the date. Give the month, the year.

Q Approximately when? Do you recall?

A I believe that that was in October of '67, September of '67.

Q With respect to Clements-Gillogly Chevrolet, does that exhibit for identification help you in determining when you had a conversation with Clements-Gillogly concerning the fleet certificate?

A Yes. Prior to October 1967, a little prior.

Q Was there any other dealer you can remember?

A Also this refreshes my memory on Dave Hallman Chevrolet.

Q When did you have a conversation with Dave Hallman?

A That was inthe same period of time: A little before October of 1967.

Q Did these conversations about a fleet certificate take place duringyour initial communication with Kem Dengler?

A No, it did not.

Q When did it take place?

A After I was told that they could not sell me automobiles or he said I needed a fleet certificate.

MR. KAPLAN: I move to strike.

MR. PERSON: May we have a side bar conference in this?

(At the side bar)

MR. KAPLAN: It's hearsay, your Honor.

MR. PERSON: I want to be able to establish that Mr. Strimple had communicated with Frank Maiorana prior to December 15 concerning the statements that he was getting from various franchised dealers in the Buffalo area that a fleet certificate was necessary in order that General could be able to get cars -- General or Nabcor could be able to get cars from these dealers.

THE COURT: Your position now is that they were willing to sell to him provided he had a fleet certificate;is that right?

MR. PERSON: I'm not changing positions. I think the problem is there are two aspects to a dealer's inventory. One of them is broken down by a fleet certificate and another is out of the retail. So there is a boycott as to retail, and the fleet allotment was never made --

THE COURT: What do you mean "a boycott as to retail"?

MR. PERSON: That the dealers refused to deal completely. They refused to deal when they said --

THE COURT: If they refused to deal completely they were refusing to deal completely. If they were refusing to deal except upon a condition they were refusing to deal except upon a condition. You can't say they are the same. If I am a dealer and somebody says "I want to get a commitment for 200 to 400 cars," it's unlikely I will say to him, "I refuse to deal with you entirely, and I also refuse to deal with you except unless you have a fleet certificate." It is an unlikely situation.

MR. PERSON: Bob English said he would prevent any dealer from getting cars whom he found giving cars to Nabcor or General, so that would be a total boycott.

THE COURT: That's your witness' testimony.

MR. PERSON: Then we have additional testimony that dealers who had said they would be willing to sell cars to General or Nabcor, within one or two days they came back and said they cannot sell the cars, the zone told them not to sell because General or Nabcor does not have a fleet certificate.

THE COURT: What does that add up to? That's the thing that mystifies me.

MR. PERSON: That adds up to the fact that the dealer wanted to sell cars to Nabcor but GM took a condition on whether the dealer could sell.

THE COURT: It's a different type of claim. It raises the possibility of very close questions of possible distortion, possible misunderstanding, the possibility that there was no antitrust violation at all. A flat boycott that was imposed by General Motors or agreed to by General Motors would be an antitrust action, but if you are dealing in this fleet certificate area and you are dealing in an allotment area where somebody goes to a dealer in the beginning of the model year and says "I want 200 to 400 cars," if you are dealing with problems of allotments, with problems of fleet discounts, if you are dealing with problems of price, this is a completely different ballgame and a straight boycott.

This is something you really do not recognize, but I am sure as I'm sitting here that it is a different ballgame. It's a different type of claim involving different problems.

I can't get it straight from you what it is you are claiming.

MR. PERSON: It's both, your Honor.

THE COURT: You are claiming in some cases there was a straight refusal and in some cases there was a --

MR. PERSON: A condition, your Honor.

MR. KAPLAN: In any event, as to this particular testimony it's Dengler's reason why he would not sell. We have dealt with this before.

THE COURT: If this is something that comes strictly as his testimony, what he was told leading him to take certain actions, then it is not in and of itself a hearsay use. It is simply to show he was told this and that he did something.

I take it he never applied for a fleet certificate?

MR. PERSON: He thinks he has.

THE COURT: He thinks?

MR. PERSON: The dealers would take care of that.

THE COURT: Did he ever ask anybody?

MR. PERSON: Yes, he did.

THE COURT: Have you brought that out? You are now on redirect. Have you ever asked him that?

MR. PERSON: I think he testified to that already. I think he alluded toit at one time. I think he said thathe was told that Gillogly was going to take care of a fleet certificate for him. That's my recollection.

THE COURT: I'm sitting here and trying to grasp --

MR. PERSON: That's as much as it was.

THE COURT: Again, it's so easy for people to be mixed up in this fleet area or to purposely mix things up.

MR. PERSON: I'm not doing it purposely.

THE COURT: The witnesses can. They can suddenly decide to talk about the fleet discount which becomes talk about fleet certificate. They can decide that talk about a fleet allotment becomes a refusal to sell until you have a fleet certificate.

MR. PERSON: That's the problem.

THE COURT: That's the problem. They can suddenly decide to do that.

MR. PERSON: That's what happened.

THECOURT: An allotment is a legitimate problem. If somebody says "I can't sell to you because I can't get the cars," that's a legitimate problem. That's not an antitrust violation.

MR. PERSON: I don't know if that's true. I would like to see a defense to that.

THE COURT: I would like to see a defense to that as soon as the claim is made.

MR. PERSON: We are making that claim through the fleet certificate. It's up to them to come back and say this reference to the fleet certificate really truly meant --

THE COURT: Again we shift. I was talking about an allotment.

MR. PERSON: That's what underlies the fleet certificate problem.

THE COURT: You are trying to show a basis for an action by him?

MR. PERSON: Yes.

THE COURT: I want to know what action? You are not claiming he went and used this information to apply --

MR. PERSON: He communicated with Frank Maiorana and as a result of that --

MR. KAPLAN: What is the relevance of that?

MR. PERSON: He's a witness for Nabcor now explaining what he did to tell Frank Maiorana, which brought him to Belcher's office requesting that either a letter be sent out to the dealers -- that Frank Maiorana went to Mr. Belcher's office to cure the problem that was occurring in the Buffalo zone where the dealers were saying that they would not sell to General unless General had a fleet certificate. The fleet certificate, as Mr. Kaplan and I have stipulated, was not supposed --

THE COURT: Let's not jump too fast.

Maiorana has testified, according to his testimony, it was Belcher who brought up the fleet certificate.

MR. PERSON: As a cure for the problem, to issue one.

THE COURT: But what problem did Mr. Maiorana say?

MR. PERSON: This problem that the dealers in the Buffalo area --

THE COURT: Let's get the Maiorana testimony? Do you have it?

MR. PERSON: I don't have it.

MR. KAPLAN: We looked this up to cross-examine Anthony. There are 31 different places where Maiorana describes this in his testimony.

THE COURT: You are saying that this witness communicated to Maiorana this problem and this led Maiorana to have some discussion with Belcher on the subject of fleet certificate?

MR. PERSON: Correct.

THE COURT: And who initiated it we'll try to pass for the moment.

This led Maiorana to make an attempt to get fleet certificates.

MR. PERSON: Yes. That was the Kearney situation, plus the attempts to finance a limited line of rental vehicles.

THE COURT: What is the answer to that? I don't think that's a hearsay use.

MR. KAPLAN: There are two answers. First of all, I don't see what the relevance of it is.

THE COURT: It may bear on credibility if nothing else.

MR. KAPLAN: Let me continue.

I don't see the relevance because Maiorana has already testified that he went into Belcher and what he claims he did. The "why" he has already testified to. I don't see what this iwtness by dragging in this incident with Dengler has to add to that.

Passing that question, assuming the relevance, this is a circumstance where highly prejudicial evidence has come in.

THE COURT: Why is it so prejudicial?

MR. KAPLAN: The plaintiff is making this white lie argument. It's baloney as a matter of law. We are getting in the kind of hearsay we tried to exclude, to wit, Dengler's alleged reason for refusal to sell. It's coming in, that which goes to Strimple's state of mind, to Maiorana's state of mind, which is not germane. The prejudicial impact of this testimony far outweighs any conceivable proper use of it.

THE COURT: I don't think there is so much prejudice. I'm going to overrule the objection. I don't see the prejudice.

Something that could have nothing but a hearsay witness, the kind of statement, if he told I was told by Kem Dengler and Dengler was told by English not to sell cars -- there is no conceivable non-hearsay use for that that I can see. That, I think, is the kind of thing where you don't have proof by hearsay.

But if you are talking about somebody telling him a fleet certificate was needed and that he took some action, either he took action or he didn't on that advice, then that's something else again. I know it's a fine line but --

MR. KAPLAN: I respectfully adhere to my position. I object.

THE COURT: Overruled.

MR. PERSON: Are you asking me to limit the testimony so the dealer's source of that information is not to be known to the jury?

MR. KAPLAN: I should hope so. We are now about to get Dengler's story through Strimple of what happened in an alleged conversation with the zone, and that's why I'm pressing this so hard.

MR. PERSON: It's in anyway as a result of the dealer defendants we have here. Through the dealer defendants it's admissible so that there is no prejudice. It's another event.

THE COURT: You are not talking about Kem Dengler now. Clements-Gillogly, I don't know when this conversation would have taken place.

MR. PERSON: In October.

THE COURT: The conversation by him? He said he didn't have any. Did he have any conversations in October?

MR. PERSON: Yes.

THE COURT: He was saying the conversation he had was later.

Did Strimple have conversations --

MR. KAPLAN: He has been both ways. If you look at that letter further it does not say anything about fleet certificate. It says that purchases were not considered fleet.

Your comments about the confusion of all of the terms and concepts in this area is very accurate. It's very hard to keep it straight in talking to company personnel, much less dealers, and to have it come in second- or third-hand, as we are going to have it now, is really just going to confuse the record, prolong the proceedings and be prejudicial.

MR. PERSON: The letters to the Justice Department reflect he had indicated fleet certificate contemporaneously with that letter, shortly after that letter.

THE COURT: They're all completely self-serving stuff, the letters, trying to get action on the part of the Justice Department. It means nothing. He was giving self serving statements.

Let's go.

MR. KAPLAN: I'm afraid we are starting a detour down a road --

THECOURT: I'm sure we are, but that's the breaks of the game.

Let's go.

(In open court)

THE COURT: Ladies and gentlemen, we have among the various difficult questions that have come up this:

As I have told you numerous times, one of the very basic issues in this case is whether General Motors had any illegal conversations or dealings with its franchised dealers in order to prevent the dealers from freely selling cars to Nabcor or to General or to any of the Nabcor people.

As I have said many, many times, the evidence as to whether that occurred, whether it relates to some claim that someone at General Motors told the dealers not to sell or whether it relates to some claim that someone at General Motors told the dealers not to sell unless Nabcor had a fleet certificate, or whatever occurred between General Motors and the dealers, if it occurred at all, that's the issue. All of that can be proved by a witness like Mr. Strimple or Mr. Maiorana getting on the stand and saying "So-and-so at a dealer told me that someone at General Motors told him," because that is unreliable,it's hearsay, it can't be proved that way.

In order to prove that there has to be other evidence.

On the other hand, apparently Mr. Strimple wants to now explain -- I don't know what the evidence will be and I should not be trying to forecast it, but I want to let you know something to watch here -- it may be that Mr. Strimple will testify that certain dealers in the Buffalo area told him that in order to buy cars he had to have a fleet certificate, or something like that.

Again, if the plaintiff were trying to prove by that testimony that General Motors had made that requirement upon the dealer and had been discussing that with the dealer, you could not prove it that way.

But what Mr. Strimple wants to explain, I believe, is that this happened just from his standpoint and that this led him to take certain action, to speak to Mr. Maiorana, and so forth.

What I'm getting at, and I know this is probably terribly confusing, but if you would just bear in mind that when you come to the question, to deciding the issue, as to whether General Motors had any discussions with the dealers, just remember -- and I know the lawyers and I will attempt to guide you at the time better than we can do right now -- that the proof cannot be done by hearsay.

On the other hand, if Mr. Strimple wants to simply say a conversation happened and that he took some action so that the story of his actions hangs together, he can say that. I don't think that's a very good explanation to you, but it's the best I can think of at the moment.

We'll proceed on that basis.

I want you to ask your questions carefully. I want it understood that I will permit him to testify if he wishes to do so, and this is his testimony. I will permit him to testify simply to explain the basis for any action he took either in speaking to Maiorana or in speaking to a dealer about a fleet certificate and no more.

Do you understand?

MR. PERSON: Yes.

BY MR. PERSON:

Q Mr. Strimple, don't indicate what anybody had possibly told the dealer. Merely limit your testimony to what the dealer told you as to any requirement or not, if you can understand that, so you don't have --

THE COURT: We'll work on that basis.

Q You indicated that you had had some

discussions concerning a fleet certificate with various dealers. Could you state who it was you talked with at Kem Dengler concerning a fleet certificate?

A I talked to Kem Dengler.

Q I think you testified this was during your second --

A This was during a telephone call that Mr. Dengler said that --

Q Be careful now.

A Okay.

THE COURT: I think you told us before.

A Mr. Dengler said we needed a fleet certificate.

THE COURT: You are saying that this was --

THE WITNESS: The second call --

THE COURT: This was during the telephone call when he said he would not deal with you?

THE WITNESS: That's right.

THE COURT: He said what about the fleet certificate?

THE WITNESS: To get a fleet certificate.

THE COURT: What did he say about the fleet certificate?

THE WITNESS: "Get a fleet certificate," upon which time I went down --

THE COURT: Wait a minute. I think you ought to wait for Mr. Person to ask questions.

Q What did you do at that time? Be careful so we can stop you.

A I went down to Clements-Gillogly Chevrolet and talked to Mr. Holstead and said I want to get a fleet certificate. Would you please get me one," and he said he would work on it.

Q Did you have any further communications with him concerning the fleet certificate?

A Over the period of time I talked fleet certificates, on numerous occasions, both with Mr. Holstead and Mr. O'Donnell which was their used car manager.

THE COURT: Are you finished with the answer?

THE WITNESS: As far as --

THE COURT: I will ask the reporter to read it back.

(Record read)

Q Could you take us up to the end of '75 and state whether or not or how many times --

THE COURT: You don't mean '75.

Q '67.

A I would say that in conversations there would have been at least ten times or better that I asked about fleet certificates with Holstead or Clements-Gillogly. I don't know whether it was Holstead or O'Donnell at the time I was talking it.

(Record read)

A Did I say the end of '67? I thought it meant from the time I was with Nabcor broker. I didn't get the '67.

Q That was your original testimony. When you said "many times" you were referring to '67?

A I was referring to conversations that I had from '67 on up to '69 asking for a fleet certificate.

Q You did have conversations in '67 concerning that?

A Yes.

Q Was there any statement by anyone at Clements-Gillogly Chevrolet as to whether or not the possession of a fleet certificate by General or Nabcor was a condition to having General or Nabcor being able to buy cars?

A That's hearsay evidence. You can't say that.

MR. KAPLAN: That's quite right, Mr. Strimple. It's also grossly leading.

THE COURT: You have to get his testimony about this. Ask him what the conversations were with Holstead or O'Donnell about fleet certificates and get his memory.

MR. PERSON: But the problem is that more stuff will come in than we really want.

THE COURT: Don't worry about that.

A I had a conversation with Mr. O'Donnell who -- he and I were talking about him becoming an Amway distributor and it was not at Clements-Gillogly showroom that the conversation took place.

He said, "Dale, if you want to get cars in volume you have to get a fleet certificate."

Q You mentioned Bob Baines Chevrolet. Did you have a discussion with anyone at Bob Baines concerning fleet certificates?

A Mr. Baines told me --

MR. KAPLAN: Objection .

THE COURT: Overruled.

A After he had refused --

MR. PERSON: Your Honor, may I make an

observation?

THE COURT: This is going along.

MR. PERSON: Bob Baines is a defendant and I would like the whole conversation.

MR. KAPLAN: I would like an instruction from your Honor.

THE COURT: Let's see what comes up.

What did Mr. Baines tell you?

THE WITNESS: Mr. Baines said --

THE COURT: This is at what occasion?

THE WITNESS: After he refused -- originally he agreed to sell the cars. Then when he refused to sell the cars he said "You need to get a fleet certificate. Get a fleet certificate."

MR. PERSON: Your Honor, I would like to be able to ask a leading question with respect to Clements-Gillogly and Bob Baines.

THE COURT: I don't see any need for anything leading. The witness knows what we are talking about and everybody else knows what we are talking about. I want his testimony.

MR. PERSON: The problem of the limitation may affect his testimony at this point as to those two dealerships. I would like him to be able to state the full conversation without limitation.

THE COURT: Look, if my memory serves me correctly you were never under any limitation as to asking about conversations with defendants. This was true on your direct and in every other stage. I don't know that there has been any limitation at all about asking him what people at the defendant dealer said, but if you want to ask him again, you ask him again.

BY MR. PERSON:

Q Mr. Strimple, was there any conversation at Clements-Gillogly concerning a fleet certificate that you have not told us about?

A Well, I testified that I originally went in and asked to get a fleet certificate. There came a time when I gave serial numbers of cars that I had purchased to try to get a fleet certificate with them. There was also a time when I called a secretary at the Buffalo zone and told them that I had requested a fleet certificate.

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THE COURT: Look, I don't see this is inadmissible, but I think just to preserve some order, he asked you about conversations with Clements-Gillogly, right, Mr. Person?

MR. PERSON: Right.

THE COURT: You give us, please, just stick to his question and what were the conversations with Clements-Gillogly.

You said some time you gave serial numbers to Clements-Gillogly for cars purchased, right?

THE WITNESS: To get a fleet certificate.

THE COURT: All right. Go ahead, Mr. Person, ask the questions.

BY MR. PERSON:

Q Was there any discussion of why a fleet certificate was required? You give us all the conversations you remember with Clements-Gillogly about the fleet certificate.

A That is where Mr. O'Donnell said if I wanted to get -- which is what I just got through testifying I believe --if I wanted to get cars in any volume I had to have a fleet certificate.

Q And with Bob Bain Chevrolet, can you describe the conversations, the whole conversation concerning the fleet certificate? Anything you haven't told us about?

A I testified that he agreed to sell the automobiles, that he said that he could not sell the automobiles, and he suggested that I get a fleet certificate.

Q Did he state why he could not sell the automobiles?

MR. KAPLAN: I object.

THE COURT: Overruled.

A Would you repeat the question?

(Question read.)

A To get a hold of Womack in the Buffalo zone.

Q You testified that you have submitted figures to -- that is vehicle numbers to Clements-Gillogly. You said this was in connection with an application for a fleet certificate.

Was Clements-Gillogly at that time aware that the automobiles that you listed for them were automobiles that you had resold?

MR. KAPLAN: I object to the form of the question.

THE COURT: Sustained.

Q Had you ever had any discussion with Clements-

Gillogly concerning General's disposition of the vehicles for which you had given the serial numbers?

A I don't think I went into any particular discussion about what I was doing with the automobiles.

I mean, so long as I had them I was happy. I wasn't --

Q Was Clements-Gillogly aware of whether General was reselling cars or not?

MR. KAPLAN: I object.

THE COURT: I already sustained an objection to that question. How does he know their state of mind?

MR. PERSON: I am asking if he was aware whether they do.

THE COURT: Look, Mr. Person, you can ask if somebody said something, if he saw something.

Q Did you have any communications with anyone at Clements-Gillogly concerning in any way General's method of disposing of vehicles?

A Mr. Person, Mr. O'Donnell said that if I needed cars I would have to get a fleet certificate for Nabcor. So the Automobile Dealers Association --

THE COURT: Look, this is not --

A (Continuing) So he knew.

THE COURT: I sustained the objection to that kind of thing and you have no right to say it. That is just surmised by you and I strike the testimony.

You have asked him the question if there was any discussion and he said there wasn't any particular discussion. Isn't that the question and isn't that the answer?

MR. PERSON: I think he indicated that Mr. O'Donnell was aware. I am trying to reach the point of how this occurred.

THE COURT: You can argue that. That is all he is doing right now. We can all draw inferences.

Q In your dealings with Clements-Gillogly during the period when you were buying cars in connection with the name Econo-Car, did you have any discussions with Mr. O'Donnell at that time?

THE COURT: May I hear the question?

(Question read.)

MR. KAPLAN: I object to the form of that, too, because of the insertion of Econo-Car.

MR. PERSON: It is a time frame.

THE COURT: We are having some repetion of material gone over on direct and this is not going on forever.

I am going to recess and talk to the lawyers.

Please be excused and let's be back by 2, please.

(Jury left the courtroom.)

THE COURT: I see in my notes at the time of your direct examination of Mr. Strimple, a full set of questions and answers about talks with Bob Bain Chevrolet and which he put in the Winter of 1967. But I think this is part of this series of conversations which you concentrated on so heavily.

I would like the record references, and I am positive, No. 1, that there was no restriction whatever placed upon you.

No. 2, he never said a word about the demand for a fleet certificate, and so what we are doing is going over again on the basis of what seemed to be simply a new idea or a new theory --

MR. PERSON: No, it is not, your Honor.

THE COURT: I don't know why it wasn't said because there was no restriction. Maybe I am wrong and I will take the time to get the references.

MR. KAPLAN: Page 2452, line 8 and following.

THE COURT: That must have been the day before yesterday.

Page 2448, there is a question, and this is your direct with relation to Bob Bain Chevrolet.

"Q Did you have any communication with Bob Bain Chevrolet concerning any orders for Chevrolets?

"A Yes, I did."

At the bottom of 2449 Mr. Kaplan objected to the relevance as to General Motors and the testimony relating to Bain. I simply said, "Same instruction to the jury," and then I think there was no limitation placed upon you.

I had in mind that Bob Bain is a defendant and you were free to interrogate, which you did.

You went on about Mr. Strimple saying he told Bain he wanted to issue a purchase order and so forth, the full conversation as far as you know, and I know Mr. Strimple was attempting to give the full conversation and you were asking for the full conversation.

THE WITNESS: Was I asked a question--

THE COURT: Just a minute. The questio

at the bottom of 2449 was:

"Q Will you state, will you describe the describe the discussion you and Mr. Bain had."

It calls for the full discussion. That was the first conversation because you said you wanted to buy the automobiles and then he said, "Fine, I will sell you as many Chevrolets as we can use."

Then you were permitted and, Mr. Person asked "Did you have any communications with Nabcor concerning this?" and you were permitted to testify about your talk with Maiorana or talks with Maiorana or about setting up payments and taking delivery, this sort of thing.

Then at the top of page 2452, you were asked:

"Q What was the next thing that you can recall in connection with this transaction that you described?"

Then you told about going to see Mr. Bain and you gave, as far as I knew then, you purported to give the full text of your conversation you had with Mr. Bain when he turned you off.

THE WITNESS: I can't remember all of that.

THE COURT: All right, Mr.Strimple, just desist.

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The question at 2453, "Is this all your discussion with Mr. Bain at that time?"

And your answer, "Well, we could sell the cars, went to him with the authorization for Mr. Maiorana. I don't think of anything specifically outside of the refusal to sell."

THE WITNESS: I didn't think specifically.

THE COURT: Mr. Strimple, I am not asking you any questions now, I am addressing the lawyers.

My problem at the moment is not about the admissibility of that testimony. As far as Bob Bain Chevrolet, I ruled in your favor, Mr. Person, that he could testify as to all the conversations he had with Bain because Bain is a defendant.

I guess I gave some kind of instruction to the jury about how they could consider that. There is no problem about the admissibility of that evidence and there never was.

My problem now is something that again I probably h-ve gotten myself into because of a failure to really recollect the record on this point. But I have started to permit you to go over material which was the subject of your direct testimony and in which Mr. Strimple is adding points which he had every opportunity to give on the direct, and simply adding points for whatever reason I don't know.

But, anyway, we are now having not a redirect in a sense of any orderly sense, we are simply having a rehash of the direct with points added.

Aside from any questions about the credibility of the witness, which I regard as serious here, but aside from that, I think it presents a question about the decent order of the trial. This man has been on the stand, he started on the 16th of November, which was Tuesday, and he is still on.

Why was this not covered on direct testimony? I am fairly sure if I went over the testimony as to Clements-Gillogly, another defendant, I am fairly sure that I would find the same situation, and why should you be permitted to now go into that again and have him simply add additional points?

MR. KAPLAN: Your Honor, the situation on Clements-Gillogly is exactly the same. Page 2424, and it runs on through 2435, and the last time there was an explanation about what Holstead said.

THE COURT: Let's review that.

2421, which begins on the 16th, "Who did you speak to at Clements-Gillogly at this time?"

He said"Dick Holstead."

"Q Did you offer Clements-Gillogly any orders?"

At page 2423 you asked what it is that you mentioned to Holstead, if it was Holstead he talked to.

Mr. Strimple said he believed he talked to Holstead.

"Could you state what you said to him and what he said to you?"

Kaplan objected and I overruled it.

Again, 2424, "Just tell us what you said to Mr. Holstead and what he said to you with respect to this communication, during this communication prior to October 6, 1967."

"A He said something to the effect that he didn't want to sell any cars."

There was a discussion about MV 50.

The top of 2426:

"Could you state what it is that Mr. Holstead said to you concerning that?" Meaning not being able to obtain cars.

"A He said something that he would check with the zone or something to that effect.

"Q Was there any additional discussion?

"A I don't particularly recall right at the moment.

"Q Was there any subsequent discussion with Mr. Holstead or anyone else at Clements-Gillogly subsequent to that?"

Kaplan then objected again and wanted a side bar or wanted some instruction that these conversations were not receivable against General Motors, and I then declined to give the instruction.

MR. KAPLAN: Again at page 2433 after lunch the subject came up again.

THE COURT: Yes, 2433, Mr. Person again started this line and asked Mr. Strimple if he would continue describing communications with Clements-Gillogly.

"Do you have any additional testimony concerning this communication?"

"I am not sure of the date."

And then we had testimony about the date.

Then I told Mr. Strimple to go ahead and Mr. Person said, "Will you please go ahead", and he answered on 2434:

"Mr. Holstead made the statement to me at that time that English advised him not to sell or something to that effect."

THE WITNESS: I had that struck out this morning.

THE COURT: Just a minute.

Then at 2435,"The only conversation I had with the fleet manager,which turned out to be Holstead, was he told me that he wasn't interested in selling this particular way."

There was no r-striction at all on your questioning regarding conversations with Mr. Holstead or anybody else at Clements-Gillogly. The problem arose because --

MR. KAPLAN: It came up one more time and the story changed again yesterday morning.

THE COURT: This was at the beginning of the next day, Mr. Strimple corrected his testimony and he said about the talk to Holstead, he said, "I am not sure of the date" when he made the statement that Mr. Holstead talked about English back in 1967, October, 1967, I am not sure that was the time he talked about it.

Then it was covered later. We covered it later. We got back to Holstead at some later point in the direct.

MR. KAPLAN: I was referring to 2472.

THE COURT: I was, but we got back to it at a later point in Mr. Person's direct.

MR. KAPLAN: I don't have it, offhand. I will check through it.

There is some discussion about Holstead in connection with Econo-Car on 2516. That is what I think it was.

THE COURT: 2524, the question after some testimony about a discussion or discussions with Holstead;

"Have you been able to recall your full discussion you had with Mr. Holstead?

"A Yes."

I don't know what this refers to, but it refers to what preceded it.

Why wasn't this brought out on direct examination?

MR. PERSON: I guess because I can't ask leading questions, and the witness --

THE COURT: Too bad you can't get it any other way.

MR. PERSON: As I indicated yesterday, the witness had said to me he felt somewhat intimidated, and that had a possible --

THE COURT: Intimidated by what?

MR. PERSON: When you had read the perjury statute, I think that is part of it.

THE COURT: That prevented him from talking about being asked for a fleet certificate?

MR. PERSON: Yes -- well, your Honor, I just think -- the only information that I get is from him and I know what he had told me in the past, and I have seen other documents that reflect it.

Th- fact that he doesn't have a memory here and is able to say what, in this pressure context, is something which I just can't help, but I am trying to correct the situation and there is no, you know, you are probably looking for some devious intention here, but --

THE COURT: I am just looking at the credibility. I will permit you, but at least I know what has happened and we have reviewed this transcript and I guess we could review it for other dealers, although other dealers may be in a little different situation, and I know I sustained hearsay objections to some extent.

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But, on the other hand, I think if we went through the other dealers we would find that there was more stated about their conversations than probably we now realize, even in the light of the restrictions on the testimony about conversations with the other dealers. He got quite a bit in.

The reason I was so surprised at the end of the day yesterday by this piece of testimony was that it was the first time I had ever heard of it and now I know why I was so surprised.

I will permit you to go into this, but you must understand that it is quite clear that this version differs from what was stated on direct, and I take that into account and I am sure the jury takes it into account.

Also I will permit you to go over this ground again, although it is a tremendous imposition and I don't know what it will lead to in the necessities of recross.

I think it is confusing. I was confused because until I went back over the record, I didn't know where we stood. I didn't know what had been testified to before and whether this was really entirely new material or whether it was simply additional items added to material we had before.

If I am confused by this procedure and I am following it and I am taking notes, it could very well that the jury is also confused. This is not a good way to proceed, but I will allow you to do it.

But in some way I think it is up to the lawyers to argue it. The jury undoubtedly will have it brought home to them that this was material covered on direct examination. Nevertheless, you can go into it, and that is all I have to say.

Of course, there can be recross on the subject.

I will see you back at 2 o'clock.

(Luncheon recess to 2.00 P.M.)

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pgr 1

AFTERNOON SESSION
2:10 p.m.

(In open court; jury present)

DALE STRIMPLE resumed.

MR. PERSON: Your Honor, may we have a side bar conference quickly?

(At the bench)

MR. PERSON: Inasmuch as there is going to be some discussion before the jury concerning the witness' memory, I would like to have the witness be able to answer a question as to why he answered these questions that I put to him the way he did. He has told me the reason is that he thought he was under that restraint.

THE COURT: Under what restraint?

MR. PERSON: He was thinking of the hearsay rule.

THE COURT: He can testify as to his reasons for making inconsistent statements. He can certainly do that. That can also be cross-examined.

(In open court)

REDIRECT EXAMINATION CONTINUED

BY MR. PERSON:

Q Mr. Strimple, you told us --

THE COURT: I will ask you to do this, Mr. Person. Let's try to wind this up. If there are any additional questions about conversation, let's finish that. Let's finish the dealers. Let's get finished with Clements-Gillogly, let's get finished with Baines. Let's not go back and forth repeatedly. Let's try to wind this up.

Do you have any more questions?

MR. PERSON: Yes, your Honor.

BY MR. PERSON:

Q Did you have any discussion with O'Donnell of Clements-Gillogly concerning what General was going to do with the automobiles it was buying after it was associated with Econo-Car?

MR. KAPLAN: That very question was asked and answered.

THE COURT: It's been asked twice in my memory.

MR. PERSON: I don't have any further questions, your Honor, other than to ask him before he had testified concerning the fleet certificate --

THE COURT: Ask your question.

Q Mr. Strimple, previously, right before we broke for lunch, you testified about the fleet certificates. The first time you testified about your conversations with these various dealers in the Buffalo area your testimony did not include any reference to these fleet certificate discussions. Can you state why that occurred?

A I didn't think it was important. I didn't really place any particular association on so many different pieces of conversation that took place in this thing. You just don't remember everything you should remember, I guess.

MR. PERSON: No further questions.

THE COURT: Is there any recross.

MR. KAPLAN: Very brief, your Honor.

RECROSS-EXAMINATION

BY MR. KAPLAN:

Q Who pointed out to you it was important, Mr. Strimple?

A Who pointed it out? My attorney.

Q Mr. Person?

A Yes.

Q And then you remembered?

A And then I researched to find what I was talking about.

Q You researched?

A I researched my mind.

Q I'm showing you Plaintiff's Exhibit 695, Mr. Strimple, a Bob Baines invoice dated March 17, 1969, which was originally made out to Econo-Car of Buffalo and that is crossed out and General Auto Sales and Leasing is typed in over it. This is one of the cars you bought via the subterfuge you have been talking about?

A I believe it was, yes.

MR. KAPLAN: May I have marked as Defendants' Exhibit P8 this two-page document.

(Defendants' Exhibit P8 was marked for identification)

MR. KAPLAN: I offer this in evidence.

MR. PERSON: I have no objection.

THE COURT: It will be received.

(Defendants' Exhibit P8 was received in evidence)

x

THE COURT: What did the witness say this was?

MR. KAPLAN: I didn't ask him.

THE COURT: Are you going to?

MR. KAPLAN: Yes.

THE COURT: I want to know what it is.

Q I show you Defendants' Exhibit P8. The first sheet is an order form for an automobile from General Auto Sales and Leasing to Bob Baines Chevrolet, true?

A Yes. This is an order.

Q And the second page is the invoice from Bob Baines Chevrolet to General Auto Sales for that order.

A But this auto is not signed by me.

Q I understand it's not signed by you.

The second page is the invoice from Baines Chevrolet to you, General Auto Sales?

A Yes.

Q Is that also a car you bought under this Econo-Car subterfuge?

A Could be. They didn't care who they billed it to. All they wanted to do was to ask me.

Q The first sheet is the order that Bob Baines originally took?

A That's not the order that goes into the zone, Mr. Kaplan.

Q It's the order they use in the dealership?

A It's the order thata salesman will write down as to the specs for a car.

Q That is made out to the purchaser, General

Auto Sales & Leaving, and not Econo-Car, right?

A Is this the same car?

Q You tell me.

A I don't know.

(Pause)

A I don't understand this. It's made out to General Auto Sales & Leasing, phone No. 684-2100. That's not our phone number.

Q What is the name and address of the purchaser listed on the Baines order form?

A It says General Auto Sales and Leasing.

Q And the address?

A Our Broadway address?

Q Your address.

A That's correct.

Q And the date of that order form and that invoice is at least two to three months before the date of Plaintiffs' 695, the invoice made out to Econo-Car, right?

A This shows 12/16/68.

Q That's the date on Defendants' Exhibit P8. What is the date on Plaintiffs' Exhibit 695?

A 3/17/69.

Q By the time you ordered the car for [illegible]

Plaintiffs' 693 you had already ordered one in your own name at Bob Baines Chevrolet in December of '68, true?

A Do we have a record that I received this automobile?

Q As a matter of fact, Mr. Strimple, yes.

A If we have that then I agree that that is what it's supposed to be.

Q There was no subterfuge at the time of Plaintiffs' Exhibit 695, was there? At that time you were ordering some cars for Econo-Car and some for yourself and nobody eas confused about the distinction, true?

A I would not say that it was true, Mr. Kaplan. In this particular case one of the salesmen, according to this, MR. Reno, got through a car in my name because I happened to know Mr. Reno real well. That was a very individual automobile.

Q Very individual?

A Yes.

Q You say they got it through. Do you mean they were fooling somebody by getting it through? The factory was not suppos d to know about it?

A This was not in Nabcor's name.

Q I'm talking about this one on Defendants' Exhibit P8, the first one, the one made out to you.

A That was in General Auto, not Nabcor.

Q Is that the one you say they got through?

A Evidently, and it's signed by a very close salesman friend of mine.

Q That close salesman friend of yours knew you were buying the car for General Auto Sales, right?

A I would say that he did.

MR. KAPLAN: No further questions.

T2

BY MR. PERSON:

Q Were you billed in the name of General for the cars you bought for General using the Econo-Car name?

A Yes, to order the car using Econo-Car and the billing would come in for the automobile, they would ask me how I wanted it billed.

Q Did you know in whose name the car was ordered by the dealership from General Motors?

A No, I did not.

MR. PERSON: No further questions.

THE WITNESS: I don't know how they got it through.

MR. KAPLAN: No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. PERSON: Mr. Ernest Turco.

statute in New York State?

A Yes. Bureau of Motor Vehicles.

Q What type of company is required to have books such as this?

A Automobile dealers.

Q Were you an automobile dealer?

A Yes, I was.

MR. KAPLAN: Maybe I can help and shortcut this.

I would be willing to stipulate and save a lot of this time: Turco Auto Sales and Leasing became a licensed new automobile dealer in New York State on November 15, 1967 and the address, 342 Sawmill River Road, Yonkers. In early 1970 the registration or the license was moved to 251 South Broadway, Yonkers, New York, and it subsequently moved again after the relevant period.

MR. PERSON: Where did you get that information?

MR. KAPLAN: The Motor Vehicle Bureau.

Q Do you recall a dealership by the name of Marty Motors?

A Yes, I do.

Q What kind of cars did Marty Motors sell?

A Cadillac and Oldsmobile.

Q Did you ever have any dealings with Marty Motors?

A Yes, I did.

Q Were you ordering cars for yourself from Marty Motors at any time?

A Yes, I did.

Q Were you ordering for anyone else at any time?

A Yes, I was.

Q Who was that?

A Nabcor Incorporated.

Q Whom did you deal with at Marty Motors?

A Frank Ripperger.

Q What types of cars were you ordering?

A Cadillacs and Oldsmobiles.

Q Did you ever have any discussions with anyone at Marty Motors concerning the way in which orders for Cadillacs would be processed?

A Yes, I did

Q Whom did you speak with?

A Mr. Ripperger.

Q Do you recall when that was, approximately?

A I believe it was in 1969.

Q Can you state what the conversation was?

MR. KAPLAN: Objection.

THE COURT: I'll sustain the objection right now.

MR. KAPLAN: May we approach the bench?

THE COURT: YEs.

(At the bench)

MR. KAPLAN: As far as the documents themselves go --

THE COURT: Do you have a number on that?

MR. KAPLAN: Plaintiffs' Exhibit 678 for identification, it's a bunch of documents evidently relating to some car transaction with Marty Motors.

There are two problems.

The first problem is the relevance of it, which I would like to hear about.

The second problem is that there are handwritten notations on the purchase order which I would object to even if the rest is relevant.

MR. KLEINBARD: I think your Honor will understand that this was after Frank Ripperger took the stand.

MR. PERSON: This, your Honor, represents a hiding title transaction. It's the documents that

A Yes.

Q Who was buying the car? Can you tell from the transaction you have, Exhibit 678? Do you know who in fact paid for the car, what company?

A Nabcor.

Q Can you tell from the documents who Marty Motors entitled the car to?

A Top Notch Metal Finishing Company.

Q Was this the procedure of the Nabcor system, to have an automobile entitled directly from the dealer into the name of the customer?

M KAPLAN: I object.

THE WITNESS: No, it was not.

MR. KAPLAN: Obviously it was not the general practice, but the issue is this case, this transaction.

THE COURT: I think he's entitled to ask: Was this a general procedure?

MR. KAPLAN: I'll stipulate to the general procedure.

THE COURT: Ask the witness again.

Q What was the general procedure for entitling cars in the Nabcor system?

A Well, the car would be purchased by Nabcor

East or Nabcor from the dealer and in turn through my dealership I would sell the car, I would title the car, to the purchaser, either my broker's customer or my own.

THE COURT: Then title would go from the dealer to either Nabcor --

THE WITNESS: Dealer to dealer. We were both dealers.

THE COURT: Dealer to Nabcor or Nabcor East?

THE WITNESS: Yes.

THE COURT: When I say "the dealer" I mean the General Motors dealer.

THE WITNESS: Normally it would go from the General Motors dealer to either Nabcor or myself and then it would get titled to our customer.

Q There is a notation on one of these pages here. I'm not sure --

A Can I say something else?

You asked what the normal procedure was. They would not allow us to do it that way --

THE COURT: That's another question.

MR. KAPLAN: I move to strike that.

THE COURT: Strike it.

MR. PERSON: I am unsure of the admissiblity of the document --

THE COURT: I admitted the whole thing.

Q There is a notation onthe document that says on the broker's statement: Car did not --

THE COURT: Which document?

MR. PERSON: This was one the statement of the final transaction itself.

THE COURT: May I see that?

(Pause)

THE COURT: I didn't see this before. I still can't read it. Come here and read this to me.

(At the bench)

MR. PERSON: (Reading) Car did not go through out books. Marty Motors entitled it directed to customer. Only way they could do it.

MR. KAPLAN: I move to strike that part of the exhibit which also escaped my attention.

THE COURT: Why isn't this a business record? This is the kind of thing one might note in the regular course of buisness on a business record.

MR. KAPLAN: It's not a business record. First of all, I don't sgree with that premise. Second of all, it's a self serving statement prepared in preparation of litigation. The circumstancial guarantees of trustworthiness which are the underlying basis of the business record exception, they just don't apply to this.

MR. PERSON: I have something that will help.

MR. KAPLAN: This is an explanation designed --

THE COURT: You don't know that.

MR. KAPLAN: There is no foundation it was a business record. Without that it should be stricken.

THE COURT: What do you have, Mr. Person?

MR. PERSON: I hand your Honor this (handing).

THE COURT: When did this come to light? This is a letter dated September 2, 1969 from Leonard Kirsch, Marty Motors to Nabcor.

MR. PERSON: We didn't have the document itself. It came from the Justice Department and I overlooked it in the package.

THE COURT: Look at this, Mr. Kaplan. When did you get that?

MR. PERSON: The documents from Justice, I got two packages and this came as one of the -- the second package.

THE COURT: That came to you when?

MR. PERSON: I would say maybe six months ago.

THE COURT: You didn't give this to Mr. Kaplan?

MR. PERSON: I gave him the first package but not the second.

THE COURT: It's a great inconvenience if nothing else. We had at least one witness from Marty Motors.

MR. KAPLAN: Two. Martabano was here.

THE COURT: They were asked about this subject and they should have been asked about this in view of this letter. I don't know any other way to put it.

I don't think you were attempting to use this 678. I don't think this is anything that was referred to.

The whole purpose of having witnesses down here was to interrogate them.

It could very well be that they testified falsely on the subjects you asked, but if they did then at the very least you would have the right to impeach them by prior inconsistent statements if you laid a foundation for it. I think they should have been confronted with either this exhibit 678 -- I certainly think they should have been confronted with this letter. There is not much more reason for them to have been here.

I also think Mr. Kaplan should have had this letter of September 1969, a long time ago. This is one phase of your case where there was subterfuge going on from which one would infer it was conspiratorial actuvity in General Motors. This is not a small thing.

I very much disagree with Mr. Kaplan that it's irrelevant as long as they got the car. I think if there was an intention, a policy, of concealment because of fear of General Motors, that's highly relevant.

But the point is, why are we doing it in this manner?

Under all the circumstances I am going to strike that narrative. I think normally I would say it is a business record. I'm not going to quibble over whether it's a business record or not, but I do have a problem with this. It's a problem of fairness. When the document was not used, when the witnesses with personal knowledge were here, they knew whether they were getting pressured from General Motors. They knew whether they were acting out of fear of General Motors. They're the ones with knowledge.

He may have been told something but he doesn't know. The witnesses with knowledge were here and you did not confront them with these really important documents, at least on this subject.

I will permit you to ask this witness his direct knowledge, in other words, if he recalls that -- let me put it this way: He certainly has to be able to testify as to his memory as to whether putting title in the customer's name was done through his request or their request. I don't think that's hearsay at all, but I'm going to draw the line.

In other words, if he was instructed, it was an instruction, that's a fact. That's a method of doing bueinsss.

But I will draw the line at any explanatory statements that he says were given to him by the people at Marty.

I will strike this document. You can use it to refresh his memory.

This letter of September 2 --

MR. PERSON: May I call them back? Leonard Kirsch --

THE COURT: I'll consider that later. You follow my rulings on the evidence.

(In open court)

(Continued on next page)

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THE COURT: I am directing that narrative in the box that is stricken from the exhibit.

BY MR. PERSON:

Q Mr. Turco, was this transaction represented by Plaintiffs' Exhibit 678 the only time that the title to a car bought from Marty Motors was put into the name of the Nabcor customer?

A No, it happened several times. They just wouldn't allow us --

Q Let me just try to keep it restrained. You are not familiar with some of the rules, but we have a problem of hearsay here and just try to work our way around it. Let me just limit your testimony.

Can you approximate how many times Cadillacs were entitled by Marty Motors in the name of the Nabcor customer?

A About 20 times, 10 or 2o times at least.

Q Was this done at the request of Nabcor East or Nabcor?

A Definitely not.

Q Was it contrary to the desires of Nabcor East and Nabcor?

A Definitely. We wanted the cars delivered to us, billed to us.

Q Do you recall whether you ordered Oldsmobiles from Mary Motors?

A Yes, I did.

Q Do you recall how title to Oldsmobiles was made out?

A My recollection, most of them were made out to Nabcor or Nabcor East.

Q Did there come a time when that procedure changed?

A I am not sure.

Q Do you recall when Nabcor and Nabcor East ceased doing business with Marty Motors?

A I can verify it by looking through the police book but I just can't come up with the date now.

Q Do you recall any discussions with any persons at Marty Motors concerning the termination of the relationship? Just yes or no.

A Yes.

Q Who can you recall having had a discussion with?

A Frank Ripperger.

MR. PERSON: Your Honor, in terms of the hearsay ruling, is it permissible to have that at this time?

THE COURT: Just a minute. We will take a short recess.

(Jury left the courtroom.)

THE COURT: I recall you asked Mr. Ripperger a lot of questions about whether he recalls saying certain things to Mr. Maiorana.

I assume you did that to lay a foundation for Mr. Maiorana to testify?

MR. PERSON: Right.

THE COURT: As to those things which were said which you denied saying.

MR. PERSON: I thought I did the same thing with Mr. Turco.

THE COURT: My notes don't have anything about Turco. When I say nothing about Turco, I mean I don't have anything in my notes indicating you asked either John Martabano or Frank Ripperger about whether they said certain things to Mr. Turco.

What are you going to ask this witness now?

MR. PERSON: I would ask him whether he told Turco --

THE COURT: Mr. Turco is on the stand. Whether who told?

MR. PERSON: I would ask -- I am not sure of the correct phraseology for this purpose. Do I ask him whether Mr. Ripperger told him --

THE COURT: Look, we went through this. You have a right to impeach by prior inconsistent statements and if Mr. Ripperger and Mr. John Martabano got on the stand and said, "We were never contacted by Cadillac, were were never told by Cadillac not to sell cars to Nabcor, if that is his testimony, then you have a right to try to impeach him with a prior inconsistent statement about what he is saying in court.

In other words, if he told at some prior occasion -- made a statement that was inconsistent and that statement can be anybody in the world as far as I know, and told Mr. Frank Maiorana or told Mr. Turco at some prior occasion, "I was contacted by Cadillac and Cadillac told me to sell no cars to Nabcor," you can certainly impeach Mr. Ripperger or Mr. John Martabano with those prior inconsistent statements.

But if my memory is correct, and I think we went through this before, you have to lay a foundation for that.

MR. PERSON: Right.

THE COURT: You have to do what I think you did generally, ask Ripperger if he did make those prior inconsistent statements and, if he denies it, then you can put on the outside evidence in the form of Frank Maiorana or whoever.

My problem is I think you laid all kinds of foundation for coming back and asking Frank Maiorana, but I don't know that you have done it for Turco. My notes haven't a single question about whether he said something to Turco.

MR. PERSON: I don't have the transcript in front of me. I really don't recall. I don't write questions as they go. I thought I tried to do it. I may have done it. The reason for titling the cars in the name was the factory told Marty Martabano not to sell Nabcor Cadillacs.

THE COURT: Who is supposed to have said this to Mr. Turco?

MR. PERSON: Mr. Tipperger. That is how Marty Motors would get around GM's order.

THE COURT: The rule requires, Rule 613-B, and I think the way I read it, in all fairness you should have asked Ripperger whether he said these things to Turco because he should have the opportunity to admit that he said it or deny or explain.

It may be that if he had been asked did he say these things to Turco, he would have said"Yes, I did, but" -- there is an explanation.

Or he would have dnied it, we do not know what he would have said.

So I will not permit -- I don't know whether I am jumping the gun, whether there is an objection or not?

MR. KAPLAN: There certainly is an objection.

THE COURT: I will sustain an objection to the questions about what Ripperger told Turco of the kind that I believe you are going to ask.

Let us take a short recess. If I am wrong on the record --

MR. KAPLAN: I dont think you are, page 1950 of the transcript.

(Recess.)

(Jury present.)

(The following took place at the side bar.)

THE COURT: During the recess my law clerk found a passage on page 1954, in which Mr. Person asked Mr. Ripperger whether he recalls telling Jack Snyder certain things and the witness Ripperger denied it and then I guess there are two or three points and ending up with the question, "Do you recall any conversation with Mr. Turco to the same effect?" And the answer, "Not that I recall."

Under Rule 613, I will permit you to question him about the things referred to in this passage and you can take this and follow it, but I am going to ask you to follow it quite closely.

MR. KAPLAN: May I be heard?

I object on the ground that there is insufficient foundation, for two reasons.

First of all, he was not confronted with sufficient specificity about this statement of Turco. I think he has to be asked about the time, date, place and the substance. That is page 726 of McCormick On Evidence.

Secondly, a statement, "I don't recall," is not sufficient foundation to impeach a prior inconsistent statement. I cite Westinghouse in the First Circuit, 2876 of the Fed. 2d.

Even if it comes in, I ask for an instruction to the jury that it cannot be asked for the truth but only to consider credibility.

THE COURT: It is solely credibility.

I will overrule the objection.

MR. KAPLAN: I ask for such an instruction.

(In open court.)

2

THE COURT: Ladies and gentlemen, when Mr. Ripperger was here from Marty Motors, he testified to certain things. I won't try to summarize that.

But basically he denied being contacted or given any instructions by Cadillac not to sell and so forth.

Now, he was asked whether he ever told Jack Snyder or Frank Maiorana that he was given instructions by Cadillac and so forth. He denied ever saying to Frank Maiorana or Jack Snyder that he had done these things, so he denied ever being given any instructions by Cadillac. He denied telling Frank Maiorana and Snyder of Nabcor that he had ever been given such instructions.

The framework of that is that you have the substantive evidence that his firm was never in collusion with Cadillac.

Now, the plaintiff has the right to try to impeach his testimony by prior inconsistent statements, so you have his testimony and then you have the question, did he ever tell anything previously that was inconsistent with what he said in court. He was never deposed, so you don't have a situation where you have some deposition testimony.

But the plaintiff contends he made prior inconsistent statements to Snyder, to Frank Maiorana and to Mr. Turco, and plaintiff is entitled to try to prove that and that goes solely to the question of Mr. Ripperger's credibility.

You have heard Mr. Ripperger's testimony, you have observed him, you heard him deny that he ever said anything inconsistent with that, and so you will weigh that against any testimony of this witness or Mr. Maiorana or Mr. Snyder that Ripperger did made inconsistent statements. So I think that is the framework.

BY MR. PERSON:

Q Mr. Turco, during 1968 or 1969, did Mr. Tipperger tell you that Marty Motors would sell Oldsmobiles to Nabcor and that somebody had instructed Marty Motorsnot to sell Cadillacs to Nabcor and therefore if Nabcor purchased Cadillacs, Nabcor would have to put it in the customer's name?

A Yes, he did do that.

Q Do you recall during the same time did Mr.

Ripperger tell you that the zone had told Marty Motors that GM would not permit Marty Motors to sell to Nabcor?

A Yes, he did.

Q Mr. Turco, have you had any conversations with any dealers concerning fleet certificates?

A Yes, I have.

Q Do you recall were any of them GM dealers?

A Yes.

Q Do you recall which dealers?

A Two come to mind, Bob Byrne Chevrolet.

Q That is located where?

A They are either in White Plains or Valhalla, New York.

And theother was Curry Chevrolet. It is Hartsdale or Scarsdale, New York.

Q Do you recall what date the Curry Chevrolet communication occurred, approximately?

A 1968 or 1969, I cannot give the exact year.

Q Was this in connection with an attempt by Nabcor of East New York to obtain a source of supply of Chevrolets?

A Yes, it was.

Q Do you recall who you spoke with?

A Their fleet man -- thisis Curry?

Q Yes.

A I think McCracken.

Q Mr. McCracken?

A I believe that is the name. I am not definite.

Q Did Mr. McCracken state that as a condition to being able to buy automobiles from Curry?

THE COURT: Wait a minute.

MR. PERSON: I am trying to avoid hearsay.

THE COURT: I don't know whether we are avoiding it. I take it you would object?

MR. KAPLAN: Yes, of course.

THE COURT: Is this going to be connected with some action he took? That is the only reason I allowed that other material in. It is not to prove that somebody like Curry Chevrolet had been told by General Motors anything, but just to explain his actions, as part of the narrative to explain some actions by Mr. Strimple which he said he made.

Is there anything comparable here?

MR. PERSON: Let me ask the witness.

THE COURT: Why don't you ask what he did.

Q Mr. Turco, did you ever communicate with Nabcor concerning the subject matter of fleet certificates?

A Nabcor?

Q Yes.

A I don't follow you.

THE COURT: You mean one of the Maioranas or something?

MR. PERSON: Yes.

Q Did you talk to Frank Maiorana concerning any attempt by you to get a fleet certificate?

A Yes,I did.

THE COURT: Why don't you ask if he made any attempts.

MR. PERSON: I want to make the connection --

THE COURT: Mr. Turco, did you ever attempt to get a fleet certificate?

THE WITNESS: Not attempt, I was told --

THE COURT: My question was, and I mean it just this way, did you ever attempt to get a fleet certificate?

THE WITNESS: Not with General Motors. I attempted with another automobile agency, but it wasn't GM.

THE COURT: You mean another manufacturer?

THE WITNESS: Another manufacturer.

THE COURT: You took some steps to get a fleet certificate from GM?

THE WITNESS: No, not that I can recollect.

BY MR. PERSON:

Q Did you ever state to Mr. Maiorana that you were unable to purchase automobiles without a fleet certificate?

MR. KAPLAN: I object.

A Yes.

THE COURT: I will overrule that.

MR. KAPLAN: Excuse me, your Honor, may we approach the bench?

THE COURT: All right.

(At the side bar.)

MR. KAPLAN: I frankly am at a loss to see the difference between asking about a dealer or being told by Maiorana.

THE COURT: We are splitting hairs with continued objections on these things. There is no prejudice to you in any way that I can see.

It is part, according to the plaintiffs' case, it is part of the narrative of facts of what they did and the plaintiffs want to put this on. At least I think they have a right to put it on, the facts of discussions and actions taken about this fleet certificate matter.

What it adds up to I don't know, but they want to be able to argue to the jury there was a coherent and logical reason why they were trying to get a fleet certificate and they want to argue to the jury there was something wrong in not being able to get a fleet certificate.

It seems to me that they have a right to show the different events that occurred, whether these events were discussions or not, that led them to try to get a fleet certificate.

We have a lot of evidence about Nabcor's attempts at one time or another to get a fleet certificate. This is background for that.

As far as prejudice, I really don't see it, so I will allow this strictly as part of the narrative, and that is that.

MR. KAPLAN: May I have a continuing objection to all this hearsay about the fleet certificate and the conversations?

THE COURT: All right. Let's not keep running to the bench.

MR. KAPLAN: I don't want to do that, your

Honor, but I have to protect the record.

(In open court.)

Q Did your conversation with Mr. Maiorana relate to the discussions that you had with Byrne Chevrolet concerning the fleet certificate?

A Yes, they did.

Q Did they relate to the discussions with Curry Chevrolet concerning the fleet certificate?

A I didn't hear you.

Q Did the discussions with Mr. Maiorana also relate to your discussion with Curry Chevrolet concerning the fleet certificate?

A Yes, they did.

2 Q Did you seek to purchase automobiles from Curry Chevrolet and Byrne Chevrolet?

A Yes, I did.

Q Could you state whether there was any condition placed on your ability to buy cars from either one of those dealerships?

MR. KAPLAN: I must object again and may we approach the bench?

THE COURT: Overruled.

MR. KAPLAN: I don't think you know what my objection is.

THE COURT: I think I do. Overruled.

A Curry Chevrolet --

Q Just yes or no.

A Yes.

Q Can you state what the condition was, if any?

A That I didn't have a fleet certificate and just wouldn't sell to Nabcor East New York. We were reselling cars.

THE COURT: I will strike that.

THE WITNESS: What did I say?

THE COURT: We have a problem here, you know, and it is a tortuous problem that I am permitting you to testify, trying to exclude certain things that I regard as hearsay.

But I am permitting you to testify as to things which I regard in the ways which probably the jury can't completely understand, as non-hearsay.

I am permitting you to testify if somebody told you that you needed a fleet certificate to get cars, if the dealer transmitted that to you.

THE WITNESS: Yes, he did.

THE COURT: And I am admitting that into

evidence simply as something told to you.

I am not admitting it into evidence to show there was a requirement in fact or General Motors had in fact imposed requirements, because that is all back of the dealer. Maybe the dealer was lying, maybe he was giving you a come-on or a runaround.

But the mere fact he said it to you I am admitting, nothing more, because if they want to go into something more they can get the dealer in and get the dealer to testify about that something more, if there is anything.

That is the path you have to follow. You are saying that Curry and Byrne did indicate there was this condition that you had to have a fleet certificate before getting any cars from them; is that right?

THE WITNESS: That is correct, your Honor.

THE COURT: All right.

BY MR. PERSON:

Q Can you state how much capital was put into Nabcor of East New York or in its other name as well, Turco Auto Sales & Leasing, Inc.?

Do you know how much money you put into it?

A I started out with the $5000 investment for the franchise and all-told almost $90,000.

Q Do you know how that amount was made up? Can you break it down for us?

A I put a second mortgage on my home --

Q But I mean the amounts that you put in to add up to that amount, did you actually put this money into Nabcor East New York?

A Yes, I did.

Q Could you state how much you put in and what approximate times?

A Times I couldn't come up with right away. I took an additional mortgage out, $7000 on my home.

Q Did you put that money into Nabcor East?

A Yes, I did.

Q Approximately when?

A I am sorry, I can't tell. I really don't remember.

Q Before 1970 or after?

A Possibly after. I couldn't swear one way or the other.

Q Any other amounts?

A I took a personal loan for $25,000.

Q When was this?

A I think in 1970.

Q Do you know what month, approximately?

A I could find that out very easily. I paid part of that back, but there is a large balance outstanding.

Q Any additional amount?

A County Trust Company.

Q How much was that?

A At least $20,000 or better.

Q Do you recall when?

A Again, I really can't.

Q Do you have any other amounts?

A Well, the $25,000 on the franchise itself, which I completed the payment of that by franchises I sold, plus the money I was making on my brokers selling cars that went to Nabcor to pay the total of $25,000. $20,000 over and above my $5000 original investment.

Q Was any part of the $20,000 out of your own pocket?

A I am sorry, I think there was part on signing the contract, I came up with additional moneys.

THE COURT: Do I understand you paid $5000 for your initial brokerage?

THE WITNESS: Right.

THE COURT: How much additional money did you pay or obligate yourself to pay?

THE WITNESS: $20,000.

THE COURT: And did you pay any of that in cash, did you say, out of your own money?

THE WITNESS: There may have been a small amount. The majority was through selling the franchises and paying them back.

It was my money, I didn't earn any income, I gave it away.

THE COURT: Anything else?

Q Any other amounts?

A The developing tax problem. I owe taxes because of the business.

Q Any other sums that you put in?

A Not that I put in, but I owe from the business.

Q How much?

A Approximately, I would say, $14,000, possibly.

Q Do you know what period that relates to?

A That would be after 1970.

Q Your police books show approximately 746 transactions.

MR. PERSON: Is that correct, Mr. Kaplan?

MR. KAPLAN: I have not counted it.

MR. PERSON: The numbers in the books go consecutively up to 745 actually. There are a few voided transactions. This is from the period January 18, 1968 to February 6, 1973. Going back to December 10, 1970, the date of commencement of the action, your police books show about 382 transactions.

THE COURT: When did the entries in the police book start?

MR. PERSON: January 18, 1968.

THE COURT: Then the amount of transactions through December 10, 1970, is what? 382?

MR. PERSON: 382.

THE COURT: What is your question?

Q Prior to January 18, 1968, were you obtaining cars?

A Yes, I was.

Q From whom?

A From Nabcor.

Q When did you start the Subaru franchise?

A It was either late '69 or '70. It was for the 1970 model year.

Q You also had various used cars?

A Yes.

Q Were you in the used car business?

A Well, most of my used cars were acquired through trades. I should not say most of them: Through trades, purchases, and auctions. When I sold a new car I tried to operate like a dealer and took in the used car.

Q I see from the police books you did purchase automobiles from various franchised dealers.

A Yes.

Q Can you recall various GM dealers you dealt with? You have already mentioned Hardy Motors.

A Bano Buick; Apusso Pontiac.

Can I hear the names?

THE COURT: Aren't these a matter of record?

MR. PERSON: Yes.

THECOURT: All right then.

Q Referring back to Marty Motors for a minute, do you recall ever giving Marty Motors a bad check?

A I do not.

Q Did you have any transactions that did not either run through Nabcor's books or your own police books?

A Yes, did.

Q What type of transaction was that?

A Well, from Marty Motors, when they registered them in the name of the customer, there was no way for me to keep a record in the police book because that's only for sales that I took into my business and sold out to my customers, or my broker's customers.

Q Did you have any difficulty in obtaining cars or with deliveries of cars?

A Yes, I did.

Q Did you ever have any cancellations as a result of that?

A Yes.

Q Can you approximate how many cancellations you had resulting from either delays or inability to obtain cars?

THE COURT: Isn't this going to be the subject of the specific documentary matreial which is being developed? I find it very unhelpful in

THE COURT: I don't care about the size. I want to know the specifics.

MR. PERSON: I don't think he has any specific information.

THE COURT: If not, then let's go to the next thing or have him cross-examined.

Q Mr. Turco, did you ultimately lose any of the brokers whom you named before?

A Yes, I did.

Q Were any of these losses of brokers a result of delays or inabilities to get cars?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Did you ever receive any orders from brokers which you were unable to fill?

A Yes, I have.

Q Did any brokers of yours cease doing business withyou after you were unable to fill one or more orders for the broker?

A Yes, they did.

MR. PERSON: No further questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. KAPLAN:

Q Mr. Turco, Marty Motors never refused to sell you any Oldsmobiles, true?

A True.

Q You claim that in 1968 or 1969 Mr. Ripperger told you he would sell you Cadillacs only if they were put in your customer's name, right?

A Correct.

Q They kept selling you both Oldsmobiles and Cadillacs for at least a year or two after that.

A I could not say specifically.

Q Defendants' Exhibit F in evidence shows that from Marty Motors the last sale to Nabcor was an Oldsmobile on May 21, 1970.

That was at least a year and possibly two after your alleged conversation with Mr. Ripperger, right?

A Yes.

Q You continued to get Cadillacs from Marty Motors even though you claimed that Marty insisted upon putting them in the customer's name?

A I only got them under customers' names.

Q But you got the cars?

A At higher prices.

Q You claim at higher prices?

A Yes.

Q You were selling cars in Yonkers in the first quarter of 1967, Mr. Turco?

A Yes.

Q You claim you were selling them at discount prices, is that right?

A Yes.

Q You were offering Pontiacs for sale at discount prices, true?

A Yes, I was.

Q Ruckle Pontiac was in Yonkers at that time, true?

A Yes, they were.

Q There came a time when you were present at a conversation between Frank Maiorana and Earl Stewart of Ruckle Pontiac that related to your activities, true?

A That I was in a conversation, no.

Q You were present?

A Yes. I don't believe I was in the same room. It was something I overheard in the hall.

Q That was at Nabcor's office at the Westchester

Townhouse?

A True.

THE COURT: Whom did you overhear?

MR. KAPLAN: Earl Stewart and Frank Maiorana.

Q What did you overhear, Mr. Turco, on that occasion?

A My understanding was -- not that I really overheard any of the conversation -- what I had gotten from Mr. Frank Maiorana, that Ruckle Pontiac didn't want me to sell any Pontiacs in their area because I was in direct competition. I was under the impression they would sell but they would not sell because of me selling Pontiacs in Yonkers which is their sales area.

Q You heard Mr. Stewart tell that to Frank Maiorana?

A I said Mr. Frank Maiorana mentioned it to me.

Q I read to you from your deposition conducted on April 3, 1973 at page 106:

"Q You don't remember anything at all that Stewart might have said to Maiorana on that occasion?

"A I thought there was something said about selling cars in their sales area or something, but that is what the whole thing was; I think it pertained to me because I was involved in their area.

"Q Well, do you remember the gist of anything that Stewart said to Maiorana on that occasion?

"A I can't. The only, as I said, what I felt I got out of, was that I was selling cars in their sales area. That's all I can --

"Q That's all you can remember abou[illegible]e conversation?

"A At this point, yes. That's all of that conversation."

Now, sir, you ordered automobiles from Bano Buick for Nabcor and your own business for a number of years?

A That's true.

Q Bano Buick never failed to deliver any car you ordered, true?

A I don't believe so.

Q You don't believe it's true or you don't believe they failed to deliver?

A I don't believe they failed -- it might have been a remote instance, but no.

Q Bano never refused to sell to you, correct?

A That's right.

MR. KAPLAN: Your Honor, I would like to offer at this time Defendants' Exhibits O8, X7, and Y7.

THE COURT: Any objection?

MR. PERSON: I am seeing it now. It's a compilation.

THE COURT: What do you say about this?

MR. PERSON: I have my counterpart before me. I have not had a chance to inspect it.

THE COURT: What do you say this is?

MR. KAPLAN: It's a compilation of all of the orders reflected in Nabcor's order log from Mr. Turco prior to December 10, 1966. That's separately tabulated because it's technically outside of the period we are dealing with.

Y7 is a tabulation of all of the orders for GM cars by Mr. Turco to Nabcor that appear in Plaintiffs' Exhibit 450.

X7 is the same thing except it's for non-GM cars.

THE COURT: Can we receive it subject to check?

MR. PERSON: Yes.

THE COURT: It will be received.

(Defendants' Exhibits 08, X7 and Y7 were received in evidence)

Q I invite your attention first to Defendants' Exhibit 08 in evidence, which is a record of all the orders you submitted to Nabcor that are reflected in Nabcor's order log. You will note in four of the instances it states that the order log reflects that the order was cancelled -- at least the first three of those -- the orders were for 1966 Chevrolet and Pontiac and the Buick; those were cancelled because you ordered them too late in the model year to get '66 models?

A I can not testify to that.

Q Isn't July '66 a little late to be ordering mid-1966 models?

A I don't believe so.

Q All right. That's your testimony.

Isn't it a fact, sir, that you got almost all of the cars you ordered from Nabcor? Take a look at X7 and Y7.

Q What am I supposed to look at?

THE COURT: Look at the columns. There is a column starting from the left about the middle. It says order log reflects delivery. I guess what you can say is that that reflects that the car was obtained. If the X is in the next column it says order log reflects cancellation. And then if the order log is blank, then order log reflects no disposition, so we don't know what happened to it, at least from the order log.

What is your question?

Q Mr. Turco, you were able to get the cars you wanted from Nabcor consistently the whole time you were a broker and a master broker, true?

A I would have to say no, Mr. Kaplan.

Q Do you claim there were any more than 11 cases out of the 81 orders you sent in in which you failed to get the car?

A Well, going by what you have here -- is that what you say? I sold more than 81 cars in this period.

Q Did you sell more than 81 GM cars in this period?

A You are showing Ford and Dodge and every other make here. I have Y7.

Q Look at Y7 According to Nabcor's order log you ordered 81 GM cars from Nabcor between January '67 and June '70. You got at least 70 of them.

A Also, I'm sure I ordered other cars besides going through Nabcor's log, as I stated before.

Q Confine yourself for the moment to the orders you sent to Nabcor. You have no reason to believe that this tabulation is erroneous?

A I have no reason, no.

This is Nabcor's log.

Q That's right. You don't argue with those figures?

THE COURT: We'll take those figures as they're given.

What is your question?

Q You took orders from brokers who were under you, right?

A Yes, I did.

Q There was a fellow named Swanson who was a broker under you?

A Yes.

Q Did you ever fail to fill an order he sent you?

A I believe so.

Q How many?

A I could not honestly say.

Q More than one?

A Could be possible, but I just could not say.

Q But you don't remember?

A I know he did have a cancellation.

Q Who cancelled that?

A I would like to explain this. It was through Alf-Lex. He bought the franchise but he went in partnership with Alf-Lex Auto Sales. It was a used car dealer in Yonkers. They were ordering Fords and Chevies and there were cancellations. I came across returning a deposit. I cannot get the car.

Q I read to you at page 67 of your deposition:

"Q Now, did Swanson Auto Sales ever order any cars through you?

"A I believe he did.

"Q And did you deliver all the cars Swanson ordered?

"A Couldn't swear to it. Possibly a Cadillac or so might have got delivered.

"Q Do you have any particular recollection of one that was not delivered?

"A Not offhand."

Did you ever fail to deliver any cars that were ordered by Arthur Lee?

A I don't believe so.

Q Did you ever fail to deliver any cars that were ordered by Mr. Sleeman?

A No, I didn't.

Q And Codicey Auto Brokers, they ordered one car from you; is that right?

A Just about.

Q And you delivered it?

A I believe so.

Q Did you ever fail to deliver a car that was ordered by Raby Motors?

A I believe I failed to deliver a car to them.

Q I read from your deposition at page 69:

"Q Did Raby Motors ever order cars through you?

"A Yes.

"Q Did you ever fail to deliver them?

"A I don't believe so."

Did you ever fail to deliver a car that was ordered by Mr. Atchison?

A Can I say anything on that statement that you read before about Raby Motors?

Q Go ahead.

A I looked into it further, and I realized that I did have cancellations because I came across a check that was issued to them for a cancellation of an automobile.

Q Who cancelled it? Raby? You? The dealer? Nabcor?

A Most of these were cancellations because we could not get the cars. Either we lost the supplier, or there was too much time involved and the customer no longer wanted to wait.

Q What happened in the case where you returned the check to Raby? Do you know?

A I could not swear to it, but I would have to say it was because of the delay in the delivery, if that was the majority of what they were. I could normally tell by when the order was issued to me, if I could go through my files and tell you when the check was reissued to them. If there was four or five months in between, that's excessive in waiting for an automobile.

Q What happened in the case where a check was returned? Do you know? Remember, you are being asked to swear to it.

A Can I reserve?

Q You don't know?

A No, I am not definite.

Q When did you arrive in New York this week?

A Early Monday morning.

Q You have talked to the Maioranas since then?

A In general conversation.

Q How many times?

A I think they have only been here two or three days on and off.

Q How many times?

A I cannot give you an exact time.

Q How many times have you talked to Mr. Person since Monday?

A Very, very little.

Q You wrote part of the pretrial brief that the plaintiffs filed in this case?

A No.

Q You were sitting at counsel table at 2.05 this afternoon with Mr. Person going through the pretrial brief.

MR. PERSON: I don't know if he knows what that is.

THE COURT: Show it to him.

MR. PERSON: He has seen pages from that pretrial brief.

A I thought that was a statement that I had made to you prior. I didn't realize it was pretrial. I apologize.

Q It was on the subject of what you testified to here this afternoon?

A Pardon?

Q You read material which Mr. Person provided to you which dealt with the subject matter of your testimony here today, right?

A Yes. Some of it.

MR. PERSON: I would like an instruction on whether or not that is irregular to try to prepare a witness.

MR. KAPLAN: It is not irregular, but it certainly ought to be considered in determining whether it is the witness's testimony or not.

THE WITNESS: Can I say something else? I discussed a lot of this when Mr. Kaplan interrogated me.

Q At the deposition?

A What you are reading from.

Q That was three years ago, three and a half years ago.

A I believe so.

Q You are more aware of what you discussed and read with Mr. Person this week than what you remember happened at the deposition, are you not?

A I was trying to read that deposition. That's what I did. I brought it up from Florida with me.

Q Mr. Turco, during the period when you were a Nabcor broker, of whatever classification, you leased some cars to someone?

A Yes, I did.

Q You leased a total of three vehicles, true?

A Yes.

Q They were all leased to Carvel Ice Cream Company?

A It was Carvel, yes, the ice cream people.

Q All of the cars you leased were Fords?

A They were Ford products. They all were not Fords.

Q Apart from those Ford products you leased to Carvel, you never leased any cars?

A That's true.

Q You never leased any General Motors' cars to anyone?

A That's right.

Q During the time you were in business as a Nabcor broker you approached franchiseddealers for one reason or another?

A Yes.

Q Among other things you picked up cars that were being sold to Nabcor?

A Yes, I did.

Q And you ordered some cars for Nabcor, true?

A Yes.

Q You ordered cars for yourself?

A That's right.

Q You told at least some of the dealers from whom you tried to buy cars that you wanted them for leasing purposes, true?

A No. That's not what I said. The ones -- you are talking about the ones I tried to contact to send me cars; I told them, you know, I sold automobiles and leased them, or attempted to lease them, which I did. I have many, many contacts that I may try to lease automobiles.

Q You told at least some of the automobile dealers you wanted to buy cars for leasing purposes?

A I don't think I ever told a dealer that I wanted the cars just to lease.

Q But you did make it known that you wanted cars for leasing, among other things?

A Reselling them and leasing them, yes.

Q You told some of the dealers who sold General Motors' products that you wanted cars put up for leasing, right?

A To resell and lease, yes.

Q You dealt with Bano Buick and you told that to Bano Buick also, true?

A Yes.

Q You told Bano you wanted cars for leasing purposes?

A And for resale. He knew I was selling them as well as attempting to lease them. In fact, clients also called me up a number of times. I tried to figure out a lease. He had a customer and he wanted me to lease to the customer. I tried to figure it out and I could not get it.

Q Did you ever tell also that any particular car you bought from Bano Buick was for a lease?

A I don't believe so.

Q Didn't you apply for a GM fleet allowance through Bano Buick on cars you bought for yourself and Nabcor?

A I don't believe so.

Q Do you know what fleet allowances are?

A Not definitely. The only thing I thought that Bano had asked me something about advertising rebates that he was getting and he could not get it because I didn't have a fleet certificate.

Q Did you ever hear about fleet rebates or fleet allowances or money that was paid back to fleets by General Motors?

A Fleet rebates, yes.

Q Did you ever apply for fleet rebates through

Bano?

A I don't believe so. I signed something for Bano, but when he gave me a car I thought he said it was for the advertising thing.

Q I show you Defendants' Exhibit P-6 in evidence. Look at the first page. Is that your signature?

A I cannot swear to that.

Q Do you deny it is your signature?

A How can I deny it or not deny it? I would sign my name again. It does not look like that. I cannot swear it is my signature.

Q Do you deny having signed this document?

A I cannot recollect.

Q In other words, you do not deny it?

A I am not denying it and I am not saying I did.

Q Would you please sign your name a few times on this sheet of paper?

A (The witness complied.)

THE COURT: How much more do you have?

MR. KAPLAN: Within ten minutes. Very little, your Honor.

THE COURT: I am going to ask the people who follow this case to wait because we have a witness from

Florida. I want to finish him tonight. Please wait a few minutes.

Q Do it three more times using the initial E instead of your full first name.

A (The witness complied.)

MR. KAPLAN: May I have this marked as Defendants' Exhibit Y-8?

x (Defendants' Exhibit Y-8 marked for identification.)

MR. KAPLAN: I offer it, your Honor.

THE COURT: Is there any objection, Mr. Person?

MR. PERSON: No, your Honor.

THE COURT: It will be received.

xx (Defendants' Exhibit Y-8 received in evidence.)

(Mr. Kaplan read to the jury from Defendants' Exhibit Y-8 in evidence.)

Q You said there was an incident involving the Byrne Brothers, right?

A Yes.

Q That was in 1973, was it not?

A Going over my deposition since I came from Florida, that's what it says, and then I read another one that said from 1970 to 1973. It could have been before that.

Q You don't know one way or the other when it was?

A I could not swear to it. I tried to figure it out in my mind, but I can't come up with a date.

MR. KAPLAN: I will read a short passage at page 102:

"Q It was the first time you tried to order some cars?

"A Right.

"Q The 1973 cars?

"A Right."

This was referring to Byrne Brothers and it was signed and sworn to by you on August 7th of this year?

A I remember reading through that since I have been here. There is a whole lot more involved than those two sentences.

Q But it all said 1973.

A It all said I was not sure. It might have been a 1973 model year. There was another deposition later than that, that says earlier dates. In 1975, it was for General Motors. I think my dates are different in there.

Q With respect to Byrne Brothers, sir?

A I believe so. I could be wrong. I would like to look at the 1975 deposition.

Q Mr. Turco, I read your deposition last night. If Mr. Person can call it to my attention --

A It was the one in 1975.

Q It could have been '75 also?

A Not the year, the deposition. That's not the only deposition.

Q They are both right here, both sessions (indicating).

A One was taken in 1975. That's what I am saying.

THE COURT: We know that.

Let's cut it short.

What is your contention?

THE WITNESS: I really don't know.

THE COURT: You don't know when it happened? You don't know when this incident with the Byrne Brothers happened?

THE WITNESS: I am confused about it, yes.

Q I read from the 1975 session of the deposition as long as you bring it up. This is on page 283, with respect to the Byrne Brothers' business:

"Q Do you recall when it was that these occurred?

"A Yes, sir.

"Q What year?

"A Byrne Brothers, it was probably 1971 or 1972, or it might be for the 1973 car year. I really don't know. I believe it was for the 1973 car year. I'm not sure."

It was after 1970, true?

A I can't say that. I really can't. I am confused.

Q You talked about putting money into Nabcor of East New York. You took some money out of Nabcor East New York while you were there, true?

A I drew salary. Of course I got paid.

Q How much did you get paid in total from the time you started to the time you finished?

A I would have to check my W-2 forms.

Q How many years was it, all-told, Mr. Turco? About six or five?

A When salary started I guess it was from 1967. 1966 it might have went to the auto school. I'm not sure.

Q Did you take out at least $10,000 a year?

A I don't believe so.

Q Some of the money you put in was for the Subaru business, true?

A Yes.

Q Some of it was for the used car business?

A When you say "used car business," that was -- I needed that money to take the trade in on the new cars. If I sell a $4000 car and somebody trades in a $2000 car they are only giving me $2000. I have to come up with some more money for the used car.

Q You wholesaled used cars?

A Some of them, yes, because I was hurting for cash.

Q In any event, some of that money was used for purposes other than the Nabcor new car business?

A The Nabcor System consisted of new cars. I had used car training. Nabcor brought me to the auctions. That was all part of my doing business, to take the trade for a new car and sell it. That was Nabcor business.

Q I suppose selling Subarus was part of that?

A I did that to try to exist and stay in business.

Q Out of this total sum of money you have been talking about, some of it went in after 1970?

A Possibly. I cannot swear. I am sure it did.

Q You don't know how much was before or how much was after?

A It was all in trying to keep Nabcor of East New York solvent to do business to sell new cars. I sold brand new cars after 1970.

Q Some of the money went into the Subaru business?

A I testified to that.

THE COURT: Is there anything else?

MR. KAPLAN: I have some more.

Q You said on direct that you are a stockholder in Nabcor of East New York today, true?

A Yes. As far as I know.

Q You have been a stockholder in that company since its inception?

A As far as I believe, yes.

Q You have been the sole stockholder?

A Maybe it was my wife, but I think she was an officer and not a stockholder.

Q Nabcor of East New York is a corporation as distinct from you as a plaintiff here, true?

A That's correct.

Q If the corporation recovers damages in this case the only people who could share in it are you and your wife?

A I owe sales taxes, New York State sales taxes. I am sure there are others. There is bills that the company owes.

Q Nobody else has an ownership interest in that company?

A No.

Q You filed in this court a petition for bankruptcy personally, true?

A Correct.

Q I show you Defendants' Exhibit U-7 for identification.

MR. KAPLAN: I offer in evidence, your Honor, this document. It is a certified copy of a bankruptcy petition.

THE COURT: This was a personal bankruptcy?

MR. KAPLAN: Personal.

MR. PERSON: No objection.

THE COURT: It will be received.

xx (Defendants' Exhibit U-7 received in evidence.)

Q Please turn to page 6, Mr. Turco, which is entitled: "Statement of all Property of Bankrupt. Look down at Schedule B-2, the statement of personal property. You did not list as an asset the stock you owned in Nabcor of East New York when you asked this Court to discharge your debts in bankruptcy, true?

A There was really no stock. I was out of business. I had no business. It was worthless.

Q Your business was this lawsuit, true?

A I don't know. My business was selling cars.

Q You were a plaintiff in this lawsuit seeking to recover damages from General Motors?

A That's right.

Q You did not list your ownership of stock on this bankruptcy petition, true?

A I am sure it was explained to my attorney being that there was no value in it. You know, the stock was worthless, and I can give you his name. You can check with him. He made all this it. I signed my name. I did what my attorney told me to do.

Q That was not the attorney who represents you in this case, true?

A That's true.

Q If you look at page 9, down at the bottom, it says: "Oath to Schedule B." It says: "I, Ernest Turco, the person who subscribed to the aforegoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy according to the best of knowledge, information, and belief."

A Can I interrupt you? Somebody show me where this is. I am not following you.

Q You swore falsely to this petition because you failed to list your stock in Nabcor of East New York, true?

MR. PERSON: I object to that. That's a conclusion of law.

THE COURT: He can ask the question and the witness can answer.

A Repeat the question.

(Record read.)

A I figured I had no longer stock; I had no business; I would not say that was true, no.

Q You did not list the Nabcor stock in this --

MR. PERSON: Your Honor, this is argumentative.

A I don't understand it.

MR. KAPLAN: I have another question.

THE COURT: Ask it.

Q The reason you didn't list your stock in Nabcor of East New York in this petition is because you didn't want your creditors to get their hands on sny recovery or settlement there might be in this case?

A That's definitely not true.

MR. KAPLAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Did Mr. Kaplan go over all the brokers that you had franchised under you when he asked you --

A No, he did not.

THE COURT: He did not.

Q Do you recall whether Augustine had any delayed deliveries or cancellations?

A He had delays and cancellations.

Q Any others?

A I have heard so many names --

Q Schwinge?

A They had cancellations, definitely.

THE COURT: You may step down.

Ladies and gentlemen, I have this motion day tomorrow so I will adjourn the trial until Monday. I would like the jury to retire and I will talk to the lawyers.

(Jury excused.)

THE COURT: I think it would help me to continue our discussion of these summaries. I have this motion day tomorrow, but I think I could take some time on this case in the middle of the day, or possibly late in the day. It seems to me that the last witness illustrates the need for definite material. He can't possibly remember. It is useless to try to take him through his memory of different things. I have to assume at least the great bulk of the Turco transactions are documented. We had that Y-7 and that material, and that's a start. I assume that Turco is included in the General Motors' transactions, and the Turco things that you are complaining about will be included in your materials.

MR. PERSON: To a great extent it will be, your Honor.

THE COURT: I think it would be worth coming down at 12. You can spend an hour or so together and pursue this further. I don't know exactly what, but I think it would be worth doing.

I will see the lawyers at 12 o'clock.

MR. KAPLAN: Can I have a list of the witnesses for next week, your Honor, and their order?

THE COURT: I have kept these other people a long time. We will talk about this tomorrow.

Mr. Person, give Mr. Kaplan your witnesses, please.

(The proceedings were adjourned to convene again at 12 o'clock noon November 19, 1976.)

NATIONAL AUTO BROKERS CORP., et al.

vs.

70 Civ. 5 421A

GENERAL MOTORS CORPORATION, et al.

November 19, 1976
12:20 p.m.

Trial resumed.

- - -

(In open court; jury absent)

THE COURT: What I would like to get an idea of, as much of an analysis of this statistical material as possible in tying it in with the issues in the case.

MR. KLEINBARD: Your Honor, could I start again to explain what this is and if you have any specific --

THE COURT: I understand what we talked about, whenever it was, Friday morning.

MR. KLEINBARD: It will take me a second. I think there may be some misunderstanding.

THE COURT: All right.

MR. KLEINBARD: What we have done is to take, as it says on the summary sheet, we have tkaen the plaintiffs' PX450 for the relevant period and then given the total orders that we find in PX450 in the first column through the relevant period: Those that were marked cancelled in the relevant period are in the second column.

The next two columns and the fifth column that provides some confusion. That's why I want to make sure everybody understands.

The third column contains entries in the log, that is PX450, which show both a serial number and some proof of delivery.

That's fairly easy.

The next column are materials in the log that show delivery but for some reason -- we don't know the reason -- no serial number.

Forget the column for the moment where it says log shows no disposition, because that's not terribly helpful.

The next column says other deliveries. Those are deliveries for which we have a serial number, but nothing in the PX450 to which we can specifically relate that serial number. It does not mean of course that that serial number may not be related to 450.

If I can give you an example: Since they began to keep the auto log in July of '66, it is inconceivable that some '66 cars and some for '67 would be included in this other deliveries, but whihc we would not find in PX450.

THE COURT: You mean the order log, Exhibit 450, started in July '66?

MR. KLEINBARD: That's correct.

THE COURT: There would not be much before that, would there?

MR. KLEINBARD: We have no way of knowing. What I'm saying is that we know these cars were delivered. There is a substantial number of cars, and we are obviously of the belief that these match up with some of the items for which the log says no disposition.

Then, if you want to get more specific information, then you have to do it on our analysis car by car. We can tell you what the length of the delay is, where we have that information. We can do various things, but this is the only overall disposition that we can give to your Honor.

I was not sure that that much had been made clear yesterday. That's the only thing I wanted to say.

MR. KAPLAN: I can supplement one thing: There are a substantial number, at least for Pontiac, of the 40 cars -- there are a substantial number of the other deliveries listed under Pontiac which are in fact cars which were either ordered or evidently delivered before the log started to exist.

If you see on the summary sheet for Pontiac, there is a total of 40 so-called "other deliveries" over the whole period and 37 out of the 40 are '66 and '67 model cars.

If your Honor were to open the Pontiac book to the tab marked deliveries not in PX450, you will see that from Nabcor's police books it appears that these are for the most part 1966 deliveries, before there was an auto log.

THE COURT: The third page of that, the delivery is 8/1/66. But you are saying order would have been earlier?

MR. KAPLAN: Yes.

THE COURT: Let's go back to something we have talked about many times, and that is trying to get the so-called universe.

Now, the total orders that we are concerned with, I assume, consists of all the orders received by Nabcor. We start there. Nabcor is a plaintiff and question one would be: What orders has Nabcor received from its brokers? I say from its brokers because I think the stipulation is that the orders that Nabcor received from individuals is minimal and it would not be in the regular course anyway. So we are really talking about orders Nabcor has received from brokers.

What happened to those orders? Was Nabcor able to fill them or wasn't it? Were there delays, were there problems, and so forth?

We start with the orders received by Nabcor from the brokers.

Here we are dealing with the problem of Nabcor attempting to get those orders filled with General Motors dealers. It is not solely the question of Nabcor attempting to get those orders filled with General Motors dealers. Itis not solely the question of Nabcor getting orders from its brokers. The real thrust of the problem is: Could Nabcor get the orders filled from the dealers?

It's the relation between Nabcor and dealers which, I guess, is central

To complete that picture, the other question that arises, the second question, would be: Who else was attempting to deal with General Motors dealers in getting cars?

According to our conference that we held on the 7th of November, there were only two other Nabcor entities. I want to be corrected on anything of this if I am wrong. But I think I was told by all counsel that there were only two other Nabcor entities that dealt or attempted to deal with GM dealers, and that was General Auto Sales and Leasing and Mr. Turco's organization; is that correct, Mr. Person?

MR. PERSON: Several qualifications in that. General would include Multi-Make to the extent that the testimony reflects that.

THE COURT: I accept that..

MR. PERSON: And also there were two other franchisees, one of them Bly. He made some effort with Tomlinson Cadillac-Oldsmobile and another several dealers. He had a fleet certificate problem there as well. And in Chicago. I don't think I'm going to pursue those two, but there were two others that had direct contact with dealers, Bly and --

THE COURT: Let me ask you this: Is there anything reflected in any of these documents by Bly or the fellow in Chicago?

MR. KAPLAN: It's reflected to the extent they ordered cars from Nabcor but not to the extent they tried to order them direct if they in fact did that.

THE COURT: If it's acceptable to you, what we will do, Mr. Person, is to exclude from our conversation anything about the Florida fellow or the Chicago fellow trying to deal independently with dealers. I understand that he is out of the case.

MR. PERSON: The Chicago matter is. I did have Mr. Bly on as a prospective witness. I don't think we have to call him. We have some testimony about fleet certificates and that's all. I don't think we need to call Mr. Bly.

THE COURT: I take it for our considerations in this case from here on out we are going to exclude any questions or any statistics about this Florida broker and the Chicago broker dealing, or attempting to deal, with people outside of Nabcor.

I'm looking at this long blue binder, and I would like to know if it includes anything about General or Multi-Make or the Turco entities, and any orders they placed directly to dealers or any orders that they took and tried to place directly to dealers. In other words, for those organizations does the long blue book include anything about relationships directly with dealers?

MR. KAPLAN: No, your Honor.

THE COURT: That's indicated by the cover of the book, I guess.

As far as General and Multi-Make or the Turco entities, does the long blue book include orders which they placed with Nabcor which they may have gotten from other brokers?

MR. KAPLAN: Yes.

THE COURT: Are they listed in the long blue book in the name of the Turco companies or in the name of General or are they listed in the name of the brokers, or both?

MR. KAPLAN: I believe that they would be listed as the name of Turco or General or Multi-Make also listed separately.

MR. KLEINBARD: It's also in the name of the broker, your Honor.

THE COURT: Let's look --

MR. KLEINBARD: Let's look.

THE COURT: Look at the heading for General.

MR. KAPLAN: There is one order listed here for General and that's Mr. Strimple's order for his daughter's car.

MR. KLEINBARD: On the other hand, you have August 7, Motorcar Brokerage, which is one of Turco's.

THE COURT: Is there anything for Turco Sales & Leasing or for --

MR. KAPLAN: Page 6, your Honor.

THE COURT: Ernest J. Turco, Turco Auto Sales & Leasing, Nabcor, East New York, 84 cars listed in the log as ordered.

MR. KAPLAN: That's GM.

THE COURT: I take it that Mr. Turco's company was doing two things: They were ordering cars on behalf of the brokers under them and they were also ordering cars for some customers of their own; is that correct?

MR. KAPLAN: We believe so.

THE COURT: As far as Nabcor's log is concerned, it lists it as Turco's company.

MR. KAPLAN: We're not sure. We think on looking over this that Turco's function with respect to the brokers under him was simply to pass the papre to Nabcor. Some of the brokers whom he identified yesterday as having been under him have significant numbers of orders listed as to Nabcor.

THE COURT: Where would we find some of them?

MR. KAPLAN: For example on page No. 4, the last entry is John Grascia, Majestic Auto Brokers. That was one of those under Turco.

MR. KLEINBARD: On page 2 you have Augustine Motorcar Brokers, which is one of his.

MR. KAPLAN: On page 3 there is Henry Schwinge, whom he identified yesterday. It appears he just passed the paper.

MR. PERSON: There is also to be taken into consideration that some of these brokers were handed over to Turco so the orders prior to Turco would appear in the name of those brokers.

THE COURT: How was it handled? Did Nabcor's records reflect the orders as orders from Turco, or from the other broker like Augustine? I'm talking about the time when they were functioning under Turco.

MR. PERSON: The dealer folders reflected not brokers by and large and the log by and large reflected Turco, your Honor, only, or in connection sometimes with another broker; Turco was ordering the car and the car would be actually entitled over to Turco. He was licensed as a dealer at that time.

THE COURT: I don't know just as I am sitting here right now what this entry in the General Motors material what Turco means. I don't know whether it means business that Turco got from individual customers or business that Turco was passing on that came from other brokers. It would seem to me it's important to know that.

I assume that what General Motors' material reflects is what is in the Nabcor records. They say 84 orders in the log from Turco. Can you tell me whether the 84 orders represented orders from individual customers of Turco or from Turco's brokers?

MR. PERSON: I believe they do reflect Turco's own orders. And the brokers under Turco were maintained after Turco's entry as separate listings.

MR. KAPLAN: There are at least -- both things happened and to what degree I can't tell you offhand. I have in front of me a sheet on one transaction in which Turco is listed as the broker in Nabcor's log but the purchase agreement with the customer was executed between one of Turco's brokers, somebody named Craig, and some other customer. Turco passed the car through his police book as well.

So what happened on this transaction, which was in '69,evidently is that the customer ordered it from this Craig, a broker evidently under Turco. Craig sent it to Turco. Turco sent it to Nabcor. Nabcor's books show it as a Turco order. Nabcor got the car from Rohrer Cheveolet, sold it to Turco and Turco resold it to the customer of the broker who sent it to him in the first place.

The figures for Turco obviously have in them some orders from people under him and the other statistics indicate that in addition to that there are cases where the car was not resold through Turco but the originating broker shows up on that.

THE COURT: I don't think we can achieve perfect precision but could we stipulate at least this: That by and large the 84 cars listed for Turco in the Nabcor log related to orders obtained by Turco from individual customers and that by and large where Turco's brokers submitted orders to Nabcor or submitted orders, period, those orders, insofar as they're reflected in the Nabcor log, are reflected in the names of the other brokers?

We are not going to achieve, as I see it, a precise breakout. Can we stipulate that much?

MR. KAPLAN: I would like to consider it overnight. I hope so.

MR. PERSON: That's our understanding.

THE COURT: That would help.

Would you be able to go through the blue book and, after we break up in a little while, and mark a "T" by the brokers that are Turco brokers?

MR. KAPLAN: Yes, your Honor.

THE COURT: Augustine and Schwinge and so forth.

MR. KLEINBARD: Yes, your Honor.

THE COURT: What do we know about the quantity of the orders placed by Multi-Make or General or the Turco companies, orders that they obtained, that they either placed or attempted to place with General Motors dealers?

I think we know the story on Multi-Make and I'm going to pass that. I think I know the story on General but I just want to review it.

The orders that General obtained which it did not transmit to Nabcor, but either placed with General Motors dealers directly or attempted to place, what do we know about that?

MR. KAPLAN: I think the sum of what we know about that is as follows: There were five to severn orders which Bolling and Strimple claimed they went around Buffalo with, and the testimony shows whatever it shows about that.

There is Exhibit E, which is the list of cars they got from the Buffalo area dealers which we know to be incomplete.

There will be Mr. Young's testimony presumably on Monday, which is already in a deposition which says from November of 1967 to early in 1968 when he first began operating as a Nabcor broker until September of 1970, which is two months after Mr. Strimple went out of business he ordered all his cars from Strimple; that he ordered 37; one of them his own customer cancelled and he got the other 36.

I think we also had a stipulation before we started yesterday in the testimony that Young is the only guy who sent in orders to Strimple and if there were any direct Strimple purchases that did not have to do with Young they were in the vicinity of five.

That I think is the sum total as to what we know about Strimple's activity. Other than the five to seven orders it appears that he got whatever he wanted.

THE COURT: Is that correct?

MR. PERSON: Substantially correct. There is one delay and I don't know the reason for the delay. Insofar as cars to Nabcor, I believe most of that was after the period.

THE COURT: What about the Turco companies? Same question. What do we know about orders that Turco got that he either placed or attempted to place directly with GM dealers?

MR. KAPLAN: We have a lot less precision about that.

Defendants' Exhibit J or F, whichever is the one that relates to the New York area shows about eight purchases that Turco made direct from dealers himself.

THE COURT: Which are those? Are they identified as Turco?

MR. KAPLAN: There is an asterisk on the exhibit which shows that.

THE COURT: Yes, I see that.

MR. KAPLAN: There are six direct Turco purchases.

In addition to that, the Turco records, because so many of them involve transactions where a car passed through both sets of books, they are reflected in the computer sheets in each of these five books that we have given you, and there is a last one showing a Turco involve where there is one. Turco direct purchases -- and I don't think there are a lot -- are accumulated in here with the Nabcor records.

They have not been separately broken out but by examining any particular sheet you can tell whether it's an order that Turco himself placed, because in those cases, unlike any of the others there would be an entry in the Turco involve column and no Nabcor records. I think it's de minimis.

THE COURT: It is not reflected in your summaries?

MR. KAPLAN: They are, but it is not separately broken out.

THE COURT: They're included in which column? The third from the right?

MR. KAPLAN: They would be included in the third from the right.

THE COURT: You believe that the number of those cars in the third column from the right, which would relate to Turco and relate to possible Turco dealings outside of Nabcor, that would be de minimis.

MR. KAPLAN: We think so.

THE COURT: Do you have any information on Turco's purchases outside?

MR. PERSON: I had broken down all of his orders. New car purchases from GM dealers and non-GM dealers, 1968 two from GM dealers, none from the other; 1969 three from GM and none from any others; 1971 one from GM dealers and six from the others. This is the calendar year.

So we have a total of six for GM and six for non-GM.

MR. KAPLAN: We are in agreement.

THE COURT: That corresponds with exhibit --

MR. KAPNA: Exhibit F, yes.

THE COURT: That's excellent.

Let's get back to the orders that were placed with Nabcor. What I really don't know is how to completely relate all this material with the issues in the lawsuit.

The thing that strikes me from the testimony is that there was a great variation, according to the plaintiffs' proof, in what happened.

Different things happened with different dealers, even accepting the planitiffs' witnesses in the most favorable light, and putting that testimony together with documents which are in the case as part of the plaintiffs' case, and putting aside questions of credibility, it does seem to me that there were variations.

We have testimony about Marty Motors being told by Cadillac not to sell and putting the title process in such a way as to conceal Nabcor's involvement. Well, there may be some other isolated things like that.. I don't recall anything right at the moment.

There were apparently, according to the documents now in evidence, lots of cars which were purchased from General Motors dealers by Nabcor where Nabcor's involvement was fully disclosed to everybody. Nabcor was mentioned in the orders to General Motors and so forth and so on.

You have a claim that there was a particular situation in Buffalo in the fall of 1967, which has been described. There is no indication that that situation existed everywhere.

I don't think, really, from my memory, that was pretty much localized in Buffalo. There was this association that generated that problem. So under no stretch of the imagination do you have any reasonable proof of a kind of monolithic conspiracy where there was any kind of consistent uniform carrying out of any type of conduct.

MR. PERSON: May I address myself to that?

THE COURT: You disagree. Tell me how.

MR. PERSON: I think that the area of consistency is in the requirement of a fleet certificate.

THE COURT: I knew you were going to say that.

MR. PERSON: That's only part of it. I think there are two areas. One is the white list and the other is a boycott. I think we have had evidence of both.

THE COURT: Let's take the boycott. No matter how you clice it, I have not gone over my notes and I have not read the transcript, but I venture to say, and I think I'm safe in saying it, you have different types of things alleged to have gone on, different areas, some areas -- I don't want to repeat it.

What I'm getting at is if these auto transactions were analyzed in the proper way, if they were presentedin the proper way, it might show one way or the other that there was a problem in a particular area at a particular time with a particular type of car; or it might conceivably demonstrate some consistent pattern overall.

I don't know what it's going to show. I would like to be able to know what this showed as far as either a consistent willingness to deal or a consistent refusal to deal, or if there are any pockets or areas or time periods where there were problems or where there was no problem,.

It would help to see that because General Motors is a big company and you have all these auto divisions involved and you've got different locations involved where the plaintiffs were attempting to be active, and it could be that this thing -- there were local patterns.

MR. KAPLAN: I think I can help. I'll give you what my reading of all the date is at this point.

The first point I want to make is that

in gross, looking at it from numbers, from the beginning of '66 to September '70, Nabcor got somewhere between 500 or 550 orders for GM cars.

The reason I have the range is because I have the 43 Colonial Cadillac orders which we are all conscious of. They got at the absolute minimum 446 General Motors cars. They got at the absolute minimum somewhere between 80 and 90 per cent of any General Motors car they wanted.

There are 81 transactions marked in their own order book cancalled. More than half of them are the Colonial transactions.

So putting those aside where there is a dispute as to whether they ever ordered the cars, we are talking about 38 transactions in four and a half years, where even their own records are marked cancelled.

THE COURT: I think you better go back over this. I've got the overall analysis. That's where you are working.

Start again.

MR. KAPLAN: According to their log they received from July of 1966 until the end of 1970 530 orders. That counts the 43 Colonial orders. Of that total their own log indicates cancellation in only 81 cases, 43 of which are the Colonial orders where we submit there is no proof that the cars were ever ordered from the dealer.

But in any event, the 81 figure marked cancelled certainly can include cases where the customer cancelled the order, cases where Nabcor cancelled and the order and cases where the dealer cancelled the order.

THE COURT: Without proof to the contrary I do not think one can presume it was cancelled because of inability to get the car.

MR. KAPLAN: I agree. But let's pass that. Even if you make that assumption in favor of the plaintiffs, the fact remains that their own log shows 327 deliveries for which their records specifically show a specific car with a specific serial number that matches up to a particular order in their log.

Their log shows in addition 63 more of their order entries marked delivered. There are only 77 more entries in the log for which the log itself, putting aside other records, does not indicate what happened.

THE COURT: If I add the 81, 328, 67 and the 77, do I get the 553?

MR. KAPLAN: Yes. Those four columns

explain the log entries.

In addition to that, you have this column marked other deliveries. There were in addition 118 General Motors cars which their own records show they got. We know they are unique cars, not duplicative counting, because each of those 118 has a serial number. We can tell you what that number is on every car.

If you limit your counting as to the total number of cars they got to the number where we can actually point to you a different serial number on every car, their records show that they got 446 General Motors car with different serial numbers.

THE COURT: The 446 is the sum of 328 and the 118?

MR. KAPLAN: That's right.

So that even on that minimum basis they got 446 out of a total of somewhere between 510 and 553, depending what you do with the Colonial cars. As to the balance there is very little if any as to why they didn't get the rest, if they didn't get the rest.

It may be that they got the rest and that's what the last column is, because you may or may not be double counting between column four, which indicates cases in which their order log or documents specifically related to particular order log entries showing that an order was filled and the other deliveries which may or may not duplicate those cases and there is no way of knowing.

THE COURT: The 513 in the last column to the right is the sum of what?

MR. KAPLAN: It's the sum of columns 3, 4 and the other deliveries.

THE COURT: What is your column one? Where it says total orders?

MR. KAPLAN: Yes. It's the sum of the two columns under log which shows delivery, the serial column and no serial number column.

THE COURT: Go over that again. The 513 is the sum of what?

MR. KAPLAN: The sum of columns marked serial number and no serial number, and the column marked other deliveries.

THE COURT: All right.

MR. KAPLAN: So the first point is that they got somewhere between 80 and 95 per cent or maybe more of all the GM cars they ever ordered.

THE COURT: The 80 per cent is what?

MR. KAPLAN: 446 over 552. That's an approximation. I'm doing that as I stand here.

THE COURT: And --

MR. KAPLAN: The other number would be 513 over 553. I'm just assuming --

THE COURT: Anybody have a calculator?

MR. KAPLAN: I didn't bring it.

THE COURT: Why doesn't somebody figure out the percentages?

MR. KAPLAN: That's the first point. That's the gross look at things. Your Honor is interested in what the patterns were and so are we.

I refer back to the cross-examination of Anthony Maiorana because that csoss is based on our theory of what really happened.

Take Chevrolets. If your Honor were to look through the book marked Chevrolets, you would find in the first period of Nabcor's existence they got a couple here and a couple there and a couple somewhere else, and there was no great particular source.

Then starting in the middle of 1966 Nabcor started to buy Chevrolets from Matt Slap. If you will turn the pages consecutively, you go down to consecutive order number somewhere in the range of about the mid-300s, you'll see that most of the Chevrolets came from Matt Slap with a scattering from other dealers. In fact, you don't have to go that high.

THE COURT: You say order number. Where do I get that?

MR. KAPLAN: In the lefthand column of the computer printout, something like -- see an entry NAB consec -- and then there appears immediately to the right of that a digit number.

THE COURT: I have blanks.

MR. KAPLAN: Those are transactions where there is nothing in the order log.

THE COURT: The first one I come to is a 117.

MR. KAPLAN: Turn to 250 and they're all consecutive. There are gaps, of course. If I carry it through -- you need not follow in the book. I will summarize what is in the book.

What I think the book shows is this: That starting some time in '66 or '67 they started getting Chevrolets from Matt Slap. They have got most of them from Matt Slap.

THE COURT: Go back. I'm taking this thing. I have started thumbing through the Chevrolet book from the beginning. These are orders in chronological order, I gather.

MR. KAPLAN: Roughly.

Where there is an order log entry it is --

THE COURT: I know it could not be perfect. I have a few orders to Norton or one or two other people. Then there does come a time when we start having a fairly large group of orders, Luby Chevrolet, and that is Nabcor order number 117. Can you find that?

MR. KAPLAN: I have it.

THE COURT: Luby Chevrolet at 117. Nabcor received the order July 17, 1966, ordered a car from the dealership September 27, got it November 29.

MR. KAPLAN: Yes.

THE COURT: Mr. Person, is there anything wrong with that transaction?

MR. PERSON: We maintain that there is too much of a delay in many of the vehicles, and I'm going through and analyzing. I have been analyzing Buick up to now. There are periods --

THE COURT: This was a 1967 Chevrolet, was it not?

MR. KAPLAN: We assume so. It could not be a '66. It must have been a '67. We don't really know.

THE COURT: Am I going to be faced with a claim that there was an undue delay because of a conspiracy, because it took two months to get a car in the fall of '66, which was undoubtedly a brand-new Chevrolet, the '67 model year?

MR. PERSON: I think there are --

THE COURT: Again, I don't want to deal in generalities. The generalities are nothing in this case but a trap.

MR. PERSON: A period of 63 days, I believe, is excessive.

THE COURT: You will contend that there was a conspiratorial activity which affected the delivery here?

MR. PERSON: The fleet allotment is where that probably occurred.

THE COURT: Are you looking at the page I'm looking at?

MR. PERSON: I am not but I've taken down the dates.

THE COURT: Look at it.

MR. PERSON: All right. I see the page.

THE COURT: Is there anything wrong at all with that transaction?

MR. PERSON: Our contention is that there are excessive delivery times that result --

THE COURT: Was that excessive?

MR.PERSON: 63 days, I believe was excessive.

THE COURT: You will claim that was one of the many antitrust violations?

MR. PERSON: Yes.

THE COURT: I am really at a loss. I don't know what you can be talking about.

MR. PERSON: Customers cancelled because of delays and if the typical order that goes in --

THE COURT: Do you know anything about when the cars were getting to be available in the fall of 1966 for the '67 model year? Do you know any of the circumstances of this order to indicate that there was anything abnormal?

MR. PERSON: I have sought to subpoena GM and you quashed the subpoena.

THE COURT: I don't think you could keep answering that.

MR. PERSON: I wanted to put proof on with respect to that.

THE COURT: Have you tried to get to Luby and find out what was the reason for the delay in that time period? Have you ever told me you wanted to investigate this particular problem? Have you talked to Luby?

MR. PERSON: No, I have not.

THE COURT: I don't think there is a lick of anything in the record.

Did he cancel?

MR. PERSON: This was not a cancelled order.

THE COURT: How can you even talk about it?

According to this group of sheets the first consistent set of orders was with Luby.

MR. KAPLAN: Yes. That takes us pretty much through '66. I think into '67. You will find that Don Allen is in there after that.

THE COURT: You started to talk to Matt Slap?

MR. KAPLAN: Yes, I did want to go to that.

The next substantial number --

THE COURT: After Luby we come to Don Allen?

MR. KAPLAN: Right.

THE COURT: Are these the orders that were involved in this controversy?

MR. KAPLAN: Yes.

THE COURT: I see.

There are cancelled notations at the bottom of the page except in two cases. Then we are back to Luby.

Let's take a Luby order, order number 215. It says "cancelled."

Do you claim that that was cancelled because the conspiracy prevented Luby from delivering the car to Nabcor?

MR. PERSON: Not in that case, no, your Honor.

THE COURT: We start again at 251, Matt Slap. You started to talk about that.

MR. KAPLAN: In about this period, which is the early part of '67, they started buying heavily from

Matt Slap Chevrolet.

There is also a scattering of purchases from A.C. Chevrolet in the first half, roughly, of '67.

They go through buying with Matt Slap with an occasional order that was marked "cancelled" or an occasional order that you can't find out what happened to it, and that continues; and then at order 388, which is in the summer of 1967, Rohrer Chevrolet appears.

THE COURT: One interesting thing is this: If you have a dealer --

MR. KAPLAN: We are doing that tabulation now.

THE COURT: If you have a dealer who sells car after car after car, and then there is a cancellation here and there, that situation, it seems to me, has some significance.

MR. KAPLAN: We are tabulating that right now because we think that most of these 38 orders marked "cancelled," putting aside Colonial, most of them fall right in the middle of long relationships with the dealers involved, and there are very few places where you find what the plaintiffs claim happened with Ruckle, which is $70 just coming back and no more transactions.

I don't even know of others offhand. There may be, but I don't know of them.

THE COURT: This is the kind of thing that is shown. The patterns will appear. I think this is very helpful.

MR. KLEINBARD: You can also chart it as we have by dealers, so you can see Luby, A.C., then Matt Slap, and then Rohrer, and so forth, so you can get that visually as opposed to a chart. You could see the movement.

THE COURT: I'm beginning to see. You go through the pages of this material, but obviously, from a standpoint of comprehension, this is a little bit difficult to deal with.

In order to deal with it, I would sit down and I don't know what would emerge, but you plot some trend or do something with it.

MR. KAPLAN: We did it as fast as we could for your Honor, and we are in the process of seeing how to present it graphically and doing the analysis you suggest, which is to see how many of the problem, so-called problem transactions fall in the middle of long relationships where, by and large, they got the cars on both sides of the problem. That, by and large, is true.

THE COURT: I've got to let you go, but I would like to look at the situation of Cadillac.

We do have these problems on the Cadillac situation. We have got the claim which, I think, is still made that there were 43 or so orders received.

We have the claim that Cadillac was acting in such a way that Marty Moters was trying to control the transaction. We also have the fact that there apparently weren't many Cadillacs involved.

The Cadillac situation is different, and I suppose it's inevitable that it would be different. It's a much more expensive car.

MR. KLEINBARD: And a limited production car.

THE COURT: Oldsmobile, also; there were not too many of those.

MR. KAPLAN: But the test now on Oldsmobile of both Anthony Maiorana and Mr. Turco is that at least once they got to Marty Motors, Marty Motors never refused to sell them an Oldsmobile. They had a consistent source from the middle of 1967 until the lawsuit started. They got whatever they wanted.

THE COURT: What I would like to do -- I think that this obviously is as close to a comprehensive statement of the basic transactions as we get --

MR. PERSON: From one side.

THE COURT: I don't understand that this is taken from General Motors records. I understand that this is based on Nabcor's records, so why is it from one side?

MR. PERSON: We have never maintained that we were not able to get new sources of supply as sources went down. I think the emphasis that we have seen here is on the time when Nabcor was dealing with a given dealer and not focusing on the reasons for the change --

THE COURT: The point is it's a matter of getting past this general talk and getting down to brass tacks and seeing dates, transactions, dealers, what happened.

What the story is, I don't know at the moment. Goodness knows, I have not looked through all of this material and I think that the kind of thing you are talking about is not going to be shown by these cover sheets, but I think you've got to reckon with the fact that the defense counsel are zeroing in on whatever there is to be said about transactions with a particular dealer and what happened, how long it lasted, and, you know, that kind of thing.

There is a cutoff at a certain point, if there is one, and it will show. If there was a termination with Ruckle, we will see that.

That doesn't provide explanatory background material, but at least it will illustrate, it seems to me, the issues in a much more concrete way than anything I have had. I think it will do the same thing for you. It will permit you to decide if you are going to come forward with some evidence to say that, despite all of the statistics, still there was a problem for us because --

MR. PERSON: That's right.

THE COURT: What I'm saying to you, and I'm sure you are under no illusion to disregard this, you really, it seems to me, would do very well to study this material very closely.

In the first place, I am going to expect that if this material has been gotten together in a valid way and it is accurate insofar as it purports to express things, we are going to have little or no problem in accepting it as fact, either by a stipulation or by a very simple foundational evidence.

Second, it seems to me that you ought to focus on this and see how your material about deficiencies fits in. It will help you and it will help everybody. See where the problem areas are in this material that you want to talk about, because the essence of it is that this is going to become a very, very important factual part of the case.

MR. PERSON: On both sides.

THE COURT: On both sides. I certainly hope so. And from my side.

MR. KLEINBARD: Your Honor, I would like to make a request on the record for the witnesses Mr. Person is going to produce --

THE COURT: I thought he was going to give you that yesterday.

MR. KLEINBARD: I want to be sure that the list we have is going to turn out to be the list. I spent last Sunday preparing for a witness that never showed.

THE COURT: Let's not waste time.

MR. PERSON: Al Young, an Ajello transcript, a Richard Arnold transcript, Berg and Rock transcripts, and Frank Maiorana on the damages at that point, which won't be Monday but I'm lining this up in advance.

I had forgotten to put in one of the depositions, Mr. Olsen. I would like to be able to take some extracts from his deposition if I feel I need them.

MR. KAPLAN: No problem as long as you tell us what you want to put in in advance.

THE COURT: Does this satisfy you?

MR. KLEINBARD: Yes.

I might make the suggestion, your Honor, obviously Mr. Person is at liberty to do what he wants, but until we get further into this concrete damage proof and see where the areas of disagreement are, to have Mr. Maiorana back on the stand just talking --

THE COURT: I think he's merely indicating that now. I think when we get to this question of damages, we are going to have to take a good, hard look at the situation.

I think it is to everybody's advantage before somebody gets on the stand and starts talking in generalities.

MR. KAPLAN: The arithmetic, if you use the 446 deliveries against 553 orders, that's 85 percent, and if you use the 513 against the 553, it's 93 percent.

MR. KLEINBARD: One final thing:

Are there any more of these sheets that Mr. Person has?

MR. PERSON: There will be more.

MR. KLEINBARD: May we expect more?

MR. PERSON: On Monday.

THE COURT: You will have your complete write-up first thing Monday; is that right?

MR. PERSON: Correct. I will be using portions of the materials that the defendants have supplied in addition.

One other thing, your Honor, the question of damages. I wanted to be able to have these experts, which I have talked about before, to be able to testify. Your rulings leave me in some doubt as to whether or not --

THE COURT: They do? I didn't intend that.

MR. PERSON: In other words, we can't have any experts to testify?

THE COURT: There comes a point where an expert's testimony is so divorced from the issues of the case that you don't hrear him.

I was being facetious a minute ago. I don't think I have made any rulings, but all I have siad is that I believe that before an expert could testify as to value of a company on price earnings or a multiple of earnings basis or a capitalization basis, or whatever they go into, that that might be very interesting, but it seems to me that that has to be tied to some claim which the jury would be entitled to consider, that the company failed because of the conspiracy.

If there is no issue which the jury would be entitled to consider in that regard from a standpoint of fact, why is the jury listening to an expert on that question?

I believe it is quite possible that the plaintiffs will fail in their proof on the basic facts.

I have not heard all of the proof, but to talk about the failure of Nabcor because of conspiracy when we have gotten this much in the record, I have very serious doubts if you will be able to put on this expert. I don't want you wasting your time.

MR. KLEINBARD: You might combine this with the fact that the last damage year submitted was the most profitable year for Nabcor, 1971; I think they show a profit of $100,000 according to the figures.

How that could have been the result of a successful conspiracy -- we have never been accused of such inefficiency before. Let me put it this way.

THE COURT: I understand your dilemma, Mr. Person.

MR. PERSON: It's not a dilemma. There is sufficient justification for this. I think you have to take into account the twofold nature of the conspiracy. One, that there was the boycott conspiracy, and the other one is a white list which is an illegal per se violation.

I think that the the delays that we were getting resulting in cancellations are attributable to the fact that the dealer was not permitted to sell cars to us because we did not have that fleet certificate, and therefore --

THE COURT: I don't understand how you could make that contention. I can understand a contention that Nabcor could not obtain a fleet certificate. I think it is stipulated that Nabcor could not obtain a fleet certificate.

I can understand a contention that Nabcor might, in the case of Cadillacs, for instance, and maybe even some other car, although I have not specifically heard about it, but I can understand a contention that in the case of an allotment of short-supply cars, based upon rental and leasing, an allotment made available for rental and leasing customers, Nabcor could not comply for that allotment.

I can understand such a contention and, indeed, Nabcor could not comply with the allotment. I can understand a contention that Nabcor might not at times have been entitled to a fleet rebate.

All of those contentions I can understand. I don't think that they add up to violations of the antitrust laws.

But the contention I cannot understand, and I think we had better keep it precisely in mind, is that Nabcor was not permitted to buy cars because it didn't have a fleet certificate or was not listed in some so-called white list, because the fact is that Nabcor bought cars, and that contention is no different in my mind than the more simply phrased contention that Nabcor could not buy cars.

It is simply another way of saying it. I understand that to be the issue.

When I said I could not understand the contention, I want to revise that.

I understand the contention that you make that Nabcor was prevented from buyinc ars.

Whether you say this inability to buy cars stemmed from one or another motivation is not too important to me right now for purposes of looking at the statistics we have and the damage, certainly.

In other words, if the refusal to sell Nabcor cars stemmed from just a desire to eliminate Nabcor, regardless of fleet certificates or anything else, okay. If there was a variant on that in the form of an intention to cut Nabcor off because Nabcor was not on some list or did not have a fleet certificate, it still amounts to your basic contention that Nabcor was deprived of cars and that is what we are dealing with and that's what we're exploring in the statistical material, to see if there is anything to that.

MR. PERSON: Your Honor, it's a little bit sophisticated and I find it difficult to get the point across because of the time limitations, but essentially our claim in part is that the dealers were prohibited by GM from selling to people to whom they chose to sell. If that's not an antitrust violation, your Honor, then we will be up on appeal on that point, but --

THE COURT: You will be up on appeal either way.

I don't understand what you just said, though.

MR. PERSON: The fact that Nabcor could get a car is not the complete answer. Even if Nabcor bought every single car it ordered, which it did not, our further contention is that the dealers who were willing to sell to us on the basis that they chose to sell to us were stopped from doing so, which means that they were not allowed to deliver cars to us through that fleet allotment, even though they wanted to, and that caused the delays which caused cancellations and contributed to the problem in addition to the boycott.

THE COURT: I have not heard a lick of evidence.

MR. PERSON: That's in the record.

MR. KLEINBARD: Pontiac --

THE COURT: You tell me about that in the record. If I understand you, you are saying, even if they got all these cars-- and you have just said even if they got every car they ordered and they wanted to get --

MR. PERSON: Which they did not.

THE COURT: -- even if they did, you still say, as a matter of legal reasoning, there would be an antitrust violation because they were not permitted to get it on the basis that they wanted?

MR. PERSON: The dealer was not permitted --

THE COURT: To get cars on what basis?

MR. PERSON: On fleet allotment basis. The factory has no right to prevent a dealer from ordering cars, whether it be wholesale or retail.

THE COURT: I want to make sure. This is somewhat new to me. It may, indeed, even be new to your friends at the rear table.

MR. PERSON: I don't think so. They know the white list argument.

(Continued on next page)

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THE COURT: You are saying from the dealer's standpoint the dealer was prevented from selling cars to Nabcor out of the dealer's fleet allotment. Is that what you are saying or are you saying something different?

MR. PERSON: I'll rephrase it.

THE COURT: You keep rephrasing every time I repeat what you say.

MR. PERSON: Because you don't use my words, your Honor, and that is that thedealer wanted to sell cars to Nabcor. The Buffalo incident, I think, very clearly --

THE COURT: Can you just tell me your proposition?

MR. PERSON: The dealer has a right to sell to Nabcor whether the dealer chooses to sell on a wholesale or retail basis. GM's retail allotment prohibited the dealer from selling to Nabcor --

THE COURT: You said a fleet allotment?

MR. PERSON: It's a problem. It's complex. The dealer only had a limited number of cars to sell at retail. His overhead required he sell them at something near list. He only had a certain number of cars to sell --

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THE COURT: You are saying that the dealer, as a general rule, had a limited number of cars he could sell at retail. ARe you telling me this?

MR. PERSON: Yes.

Do you stipulate to that?

MR. KAPLAN: No. Your Honor, that's the same kind of proof the rest of the case is based on.

THE COURT: What is the next step in this argument?

MR. PERSON: That GM does not make available to its dealers, theonly ones to whom it sells cars, all of the production of GM. It sets aside a certain amount of production for what GM has set up, an established list of purchasers who are permitted to take down that fleet allotment that's set aside.

THE COURT: Now you are on the subject of fleet allotment. In other words, you are saying that as far as fleet allotment, General Motors limited that availability of that fleet allotment to certain selected purchasers, right?

MR. PERSON: Right.

THE COURT: And the dealer could not obtain cars for Nabcor out of that fleet allotment?

MR. PERSON: Yes, sir.

THE COURT: Is this your contention?

MR. PERSON: Absolutely. It's a white list and the dealer was prohibited from selling to whom he chose to do so, and that's a violation of law as well as the boycott. This is a conspiracy.

THE COURT: Are you contending that once another dealer got a car on a fleet allotment he could not resell it to Nabcor?

In other words, suppose he presented to General Motors some kind of application that referred to Hertz. Are you saying that the dealer was absolutely bound to sell that car to Hertz?

MR. PERSON: If an allotment was made up because of Hertz. They will maintain that the dealer was free to sell the car to anyone they wanted to?

THE COURT: Between General Motors and the dealer you say the cars were only made available for the purpose of supplying Hertz?

MR. PERSON: Yes, Hertz and the others on the list. That's a white list theory. It's a clear cut white list.

THE COURT: I think it would be a very

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interesting theory but I don't understand that it is backed up in the record.

MR. PERSON: It is.

THE COURT: You get busy and show me things in the record.

MR. PERSON: Those are the depositions of Rock, Berg and Olsen.

MR. KAPLAN: I have one sentence to say and I don't think it's backed up in the record: If it were, it would be lawful as a matter of law.

MR. PERSON: He's going to stipulate as to what they do. He's getting set to, I think.

THE COURT: I'll say one thing. My memory of the record is that generally the allotment was totally academic.

MR. PERSON: That's not our contention.

THE COURT: The thing is you make these general statements --

MR. PERSON: Colonial Cadillac was one of those incidents.

THE COURT: That's a tiny, tiny part of this case. You tell me about the situation with Chevrolet and Pontiac. You have made a general statement which conceivably could apply for short times on specific cars, specific models, but you show me how that carried over as a general rule, and you also show me how that affected Nabcor and prevented Nabcor from getting a single car.

MR. PERSON: Remember that Ruckle Pontiac tried to order on a fleet basis for us and stopped. They turned around and did all sold orders.

The same thing happened with Rohrer Chevrolet. What has happened is that they're not getting a fleet allotment. There are documents in evidence relating to that.

That forces them to deliver out of their retail stock even though they wanted to sell to us on a wholesale basis making it economically impossible, but for those that did it they delayed in the deliveries and that's why we had extended delays. They took the cars out of the retail allotment.

MR. KAPLAN: The record disproves that.

THE COURT: Mr. Person, you get busy. This afternoon I want you to be furnished with a statement.

I'm telling the court reporter that these last few minutes, where you have defined this

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particular claim of yours, I want you furnished with that free of charge. The court reporters can give you a few pages free of charge or somebody will pay, but I want you to have this. I want you to get busy. Unfortunately you do not have the transcript --

MR. PERSON: I would love to copy yours.

THE COURT: You can't copy it. I don't know that you can copy it, but you can borrow it over the weekend, and you get busy and look at the transcript and the exhibits and show me support for this, because I think it will be very interesting.

Thanks a lot

(Adjourned at 2:40 p.m.)

NATIONAL AUTO BROKERS CORP.,
et al.,
Plaintiffs,
vs. 70 Civ 5 421A
GENERAL MOTORS CORPORATION,
et al.,
Defendants.

New York, November 22, 1976;
10.00 A.M.

Trial resumed.

- -

(Jury not present.)

THE COURT: Mr. Person, do you have your statistical data?

MR. PERSON: Yes, sir.

THE COURT: Do you have the transcript of that session?

(Handed to Court.)

THE COURT: Mr. Person handed me a batch of forms filled out. What does this represent?

MR. PERSON: These represent the transactions which we complain about, that is, essentially the cancelled automobiles resulting in loss to the Nabcor System.

THE COURT: I have the first one which relates to Frank Jones, Northeast Auto Brokers, Nabcor Order 80, dated Nabcor Purchase Order of 9/15/66.

The name of the GM dealer is Colonial Cadillac and down at line 18 of your form where it talks about cancellation you say "By whom?" and have a blank. Then you have additional information about the transaction, GM dealer not indicated.

What are we supposed to do with this?

MR. PERSON: In other words, I have in this case, I have no deal folder for the transaction. We have entries in the log at page 30037, line 27.

THE COURT: Do you have any proof about whether this deal was cancelled because the customer changed his mind or whether the deal was cancelled because of some inability to get the car?

MR. PERSON: The testimony is that these orders with Colonial Cadillac, none of the orders came through.

THE COURT: Whose testimony is that?

MR. PERSON: I believe Frank Maiorana testified.

THE COURT: Where in the record? What is the citation for that?

MR. PERSON: I don't have the citation, but he stands prepared to testify to that if it, isn't in the record already as part of the showing --

THE COURT: I don't remember any development of Colonial Cadillac. I was expecting to have some information about that when you brought in the two Colonial Cadillac witnesses and when you got these documents and there was nothing.

MR. PERSON: The most Mr. Murray said was there may have been some orders cancelled.

THE COURT: What record do you have of those orders going to Colonial Cadillac?

MR. PERSON: We have various dealer folders as indicated at the bottom of each form in which there is a deal folder for that transaction.

THE COURT: Have you got copies of purchase orders addressed to Colonial Cadillac, a record of the date when they were submitted to Colonial Cadillac?

MR. PERSON: In the log itself we have the dates at which these orders were made to Colonial Cadillac. The log entry is set forth on each of these forms.

In the case of Colonial Cadillac this is one instance where Colonial Cadillac was not indicated on the log, in this one particular instance on the top, but that is exceptional. The orders for 43 have the Colonial Cadillac entry in the log.

At pqge 30237, line 33, the entry is that on September 9, 1966, Nabcor received an order from a broker with the designation 75, which is SMC, Stanley Simpson Autos, and this was his 10th order for a 1967 Cadillac and paid $100 deposit, Order No. 101.

This thing was with Colonial on September 15, 1966, according to the log, placed with Colonial Cadillac, and there is a cancellation on November 7, 1966.

THE COURT: Who was dealing with Colonial Cadillac, who at Nabcor?

MR. PERSON: Mr. Maiorana was dealing with them in part and Mr. Nash, I believe, was also dealing with Colonal Cadillac.

THE COURT: Have you tried to work your statistical material, match them with the Paul,Weiss, items?

MR. PERSON: To some extent I have tried it by taking their page numbers and assigning page numbers of my own and using the two. I have done this for some.

THE COURT: The order numbers should be --

MR. PERSON: It is difficult to find.

We don't know which part of the book the order number would be, so I have renumbered my own numbering and going through I have assigned in the case of Consecutive Order 239, it is for a Chevrolet, so it would be the Chevrolet book, at 0847, which is the page number at the top, and my own page number 39.

So I cross-referenced it and I am continuing that.

THE COURT: In other words, I take it all of your orders have a Nabcor order number?

MR. PERSON: Yes.

THE COURT: Have you matched up each with the other Paul, Weiss material?

MR. PERSON: I have done -- not on those forms, but I have done it to a very great extent with my own working papers. I have cross-checked a lot of these and I will be in a position tonight to finish the numerical cross-filing.

THE COURT: All right. Mr. Kaplan, you were going to work up some further materials?

MR. KAPLAN: What are you referring to specifically, your Honor?

THE COURT: What we talked about on Friday, what you were referring to, charting other transactions with dealers and how frequent -- page 2905 of the record. We are tabulating that right now because we think that most of these 29 orders marked "Cancelled", putting aside Colonial, most of them developed right in the long relationships with the dealer involved and so forth.

MR. KAPLAN: We are not finished with that yet, your Honor.

THE COURT: When will you be?

MR. KAPLAN: We hope by tomorrow, but Wednesday is a safer bet.

THE COURT: My law clerk tried to get your office Saturday because I wasn't clear. In your sheet labelled "Analysis of Nabcor GM Transactions," you have the statement at the top "Order log entry not indicating identity of dealer not included."

Now, in our discussion of those GM transactions you gave me some percentages based upon the total of 553 in Column 1.

MR. KAPLAN: Right.

THE COURT: In just thinking about this Saturday I wondered how your statistical analysis and your percentages and so forth were affected by the order log entries with no indication of order from franchised dealers. You have given several sheets summarizing those, but can you comment on that?

(Continued on nextpage)

MR. KAPLAN: Yes, I can. At this point before giving you statistics, we don't think they're strictly relevant. If there is no indication that the car was ordered that transaction ought not to be reflected in any computation of what percentage of the cars they got.

Having made that point, there are only 34 GM cars that were orders from Nabcor for GM cars to which there is no indication of a franchised dealer. If you take as the minimum number of GM cars delivered the number 448 from the analysis of Nabcor GM transactions, and then you add to the total orders the 553 figure and the 34 I have just mentioned, you get a minimum of 76 per cent of all the cars from GM, even if you assume that these 34, where we don't know if there was a dealer or who the dealer was, are considered to be orders.

If you take as a maximum -- if you eliminate the Colonial Cadillac orders from that 553 but add to the resultant figure 34, then the figure based on the minimum number of GM cars, it's 28 per cent. I can recompute quickly what the maximum would be.

If you include the 553 and the additional 34

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that we just discussed and take the maximum number of GM cars, 513, they got 87.4 per cent.

If you eliminate the Colonial orders the figure is 94.3 per cent.

THE COURT: What is your position on the Colonial orders?

MR. KAPLAN: The plaintiff has the burden of proving first of all that the orders were placed with Colonial which we dispute. We think there is no proof in the record to that effect.

Secondly, they have the burden of proving if there was a refusal or a failure by Colonial to deliver the cars it had to have happened within the statute of limitations period to be relefant at all and at least in the case of a number of them, particularly this order 1001 Mr. Person just mentioned,his own log said it was cancelled November 7, 1966. So it's out of the limitatio period.

Thirdly, there has to be a showing that even if Colonial got them and didn't fill them it had something to do with them.

We take the position it's irrelevant absent some further proof and that they should not be included in these totals.

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MR. PERSON: We are going to testify that these logs were kept in the regular course and either Frank Maiorana or Bill Nash will testify that these orders had been placed with Colonial. The car was never received and the ststute of limitations is a problem for some but not all. Many of the orders slipped over --

THE COURT: How do you apply the statute of limitations?

MR. PERSON: I say that we considered a lot of these orders still --

THE COURT: Do you have dates of cancellations listed?

MR. PERSON: In some. Where I had that information available I put that information in the work sheets.

THE COURT: The thing I keep coming back to, you had two witnesses from the Colonial on the stand and they are the people who either would have records, would have knowledge, would have something to tell us if there was some pressure from General Motors to prevent them from selling to Nabcor.

Of course you have questions of credibility. I know that as well as you do, but even with questions

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of credibility you've got to have evidence and you had two witnesses on the stand. You had opportunity to adduce documents and so forth and so on and the action has been going on a long time. To my knowledge there is absolutely nothing from Colonial to support any idea of conspiratorial activity preventing those deliveries. There is nothing to support the idea they ever got the cars.

I don't recall you even asked about it very much, if at all.

MR. PERSON: They had no recollection of any orders except possibly Mr. Murray --

THE COURT: Except two.

MR. PERSON: Those were earlier.

THE COURT: Early and late.

MR. PERSON: That's not the point.

We have quite a substantial documentation in our own records and we'll have testimony --

THE COURT: The thing I keep coming back to, you do not have copies.

MR. PERSON: I have three order forms.

THE COURT: You are talking about 43 cars. To have the Colonial Cadillac dealership, their representatives, come in and have the effort made to get the documents that had been furnished to the Department of Justice, we end up, we have no records at all of those orders. Maybe there were one or two, but I don't think there were any documents from Colonial or from the Department of Justice relating to any orders in the fall of 1966 by Nabcor to Colonial Cadillac.

I would expect if you had placed orders -- when I say "you" I mean Nabcor -- if they had placed orders, Nabcor has its purchase order form, Nabcor kept carbon copies, and I would expect to see those carbon copies.

MR. PERSON: We have three order forms similar to the one I'm holding in my hand for a Colonial Cadillac transaction.

THE COURT: What are the three?

MR. PERSON: I had annexed two of them on to my sheets that I had passed up to you. I referred to them earlier.

One of them is transaction 204, Montclair Auto Broker, 11/23/66.

There is another one from 203, which is not attached to the appropriate transaction.

I see order form 203 is attached, your Honor.

THE COURT: In other words, at this time Nabcor had order forms, right?

MR. PERSON: They were developing a -- it was a handmade --

THE COURT: They had order forms?

MR.PERSON: They were just beginning at this time to use these from what I could see from the other records and the form was geing used a little bit earlier than the date 11/23/66.

THE COURT: When did they develop this form?

MR. PERSON: I would suspect it was very shortly before this time. I have to go back into some transactions to see how far back I can trace this one form, but this form preceded the regular order form that we have been seeing.

THE COURT: I can see that. It's a different form.

MR. PERSON: In addition, your Honor, we have a lot of Deal folders for these transactions. We have at least half of the transactions that are indicated in the log represented by Deal folders for these Colonial Cadillacs.

THE COURT: What sort of document is that?

MR. PERSON: There is a purchase order form and a copy of that. I found either two or three of these hand prepared forms among these Deal folders as well.

Here is one, for example, cancelled 11/17/66, SMC Auto Sales, Colonial, date of order 9/15/66; Acme Wire Products was the intended purchaser of that. There is a form inside cancelling the order. I reflected all of these documents in the information that I have handed up to you, all of the things that are relevant concerning the orders contained in this sheet. I have gone through each of these Deal folders for the transactions that we have Deal folders for.

I understand that since these deals had fallen through and the cars had not been delivered there was less emphasis over the years in preserving them but we have about half or more, I believe. Wherever there is a Deal folder I have represented that at the bottom of my form; where it says N. Deal folders, I have put the appropriate number.

The third form says 1979 and that's the number that this Deal folder in my hand bears at the bottom.

MR. KAPLAN: Your Honor, I would like to

point out something which these two forms, purchase order forms, point out and it raises a question as to what the plaintiffs claim. The two purchase order forms that he has are both dated November 23, 1966. In the log at page 30037 there are at least three orders which have the entry Colonial which say cancelled November 7, 1966.

If the records are to be accepted as accurate we have the plaintiff placing more orders with Colonial after Colonial allegedly, pursuant to this conspiracy, would not take the orders.

MR. PERSON: That's a customer cancellation because of delay.

MR. KAPLAN: November 7?

MR. PERSON: The cancellations that occurred up to the end were customer cancellations.

MR. KAPLAN: Maybe Mr. Person could specify which ones then. GM is not responsible for that.

MR. PERSON: In connection with the delays, it's our position that you are responsible.

MR. KAPLAN: The specific reference to the November 7 cancellations, the cars were ordered November 2. The Nabcor order log is September 20, so we have a period of eight weeks. I am fairly confident that at least four of the weeks antedate the introduction of the 1967 Cadillacs.

THE COURT: Mr. Maiorana, what did he testify to about this? I don't recall anything approaching any development.

MR. PERSON: There was no attempt to develop the specifics.

THE COURT: Why wasn't there? He was on the stand.

The last quetions that were asked Mr. Turco on direct are meaningless. There is nobody named, no dates, there is nothing.

Are we going to have these witnesses come back when the defects in your proof are pointed out and you go back and plaster it up?

MR. PERSON: The intention was to keep the damages separate.

THE COURT: The what?

MR. PERSON: The intention with Mr. Maiorana was to keep the testimony relating to damages separate from the other.

THE COURT: This doesn't relate to damages. This relates to liability. It's a question as to whether there was any -- never mind. Let's get the jury in.

This is another big complicated messy problem that has not been explored thoroughly enough and was not explored throughly enough until somebody tried to dig into it. You had the job, it seems to me, of putting on the proof, and you have not done it.

I suppose you are going to try to patch it up. We don't know about dates. We don't know whether the orders went to Colonial. We don't know so much it is not even funny, to say nothing of anything that would indicate that General Motors participated with Colonial in preventing these transactions.

I suppose we could talk all morning about Colonial Cadillac's importance. It's 43 orders. They're all bunched in the fall of 1966. I don't know what to do about it.

MR. KAPLAN: Before the jury comes in we would like to substitute for Defendants' Y7, which came in during Mr. Turco's testimony, a substitute exhibit which updates it slightly. We found four more transactions.

MR. PERSON: No objection. The same terms, tht I will review this.

THE COURT: These are four more transactions?

MR. KAPLAN: It's not four more, in fact.

"A No.

"Q When did you first get the impression or have the understanding that Nabcor was a leasing company?

"A Well, this was after a conversation Strimple had with Bain.

"Q Do you know when this conversation took place?

"A Yes, he came into the dealership and wanted to buy 200 cars.

"Q Do you know approximately what date or month?

"A No idea.

"Q Which dealership?

"A Bob Bain Chevrolet.

"Q About how many months after Bob Bain commenced business at the Transit Road address?

"Mr. Kaplan: If you know.

"A I have no idea.

"Q Was it within a year?

"A I think it was --

"Mr. Kaplan: I object.

"Q Can you estimate about how long?

"A I would say about three or four months afterwards, maybe sooner.

"Q Were you employed there at the time?

"A Yes.

"Q Was this your first employment at the new address?

"A Yes.

"Mr. Kaplan: Mr. Arnold, the three-to-four-month estimate or maybe sooner that you just gave, that is a guess, isn't it?

"The Witness: Yes, it is."

Page 34, lines 10 to 22:

"Q You are sure that this conversation took place during the first employment by you at the new premises of Bob Bain?

"A Which employment are you talking about now?

"Q When you were at Bob Bain -- at Transit Road between March of '67 and September, '68, this meeting occurred some time between those two dates?

"A Yes.

"Q Do you recall approximately how long after the meeting it was when you left Bob Bain Chevrolet the first time on Transit Road?

"A No."

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"Q Did you see Mr. Strimple enter the premises on that day?

"A No.

"Q When did you first see Mr. Strimple?

"A He was on the showroom floor approaching Mr. Bain. I didn't see him come into the building."

Page 36, lines 3 through 23:

"Q Was there anyone else on the showroom floor other than Mr. Strimple and Mr. Bain?

"A There were people out there, shoppers, buyers, there were customers, other sales people floating, you know, moving around.

"Q Did you see Mr. Bain and Mr. Strimple talking with each other?

"A Yes.

"Q Was anyone else in, was anyone else with them, talking with them at that time?

"A No.

"Q Were you talking with them?

"A No.

"Q At any time during the discussion between Mr. Bain and Mr. Strimple did you join them and discuss anything with them?

"A No.

"Q Did anyone join them?

"A No.

"Q Did you overhear any part of the discussion that took place?

"A Yes.

"Q Could you tell me what you heard?

"A Mr. Strimple asked Mr. Bain to purchase 200 cars, Mr. Bain said he wouldn't sell him the cars.

"Q And how long did this discussion take place?

"A It wasn't long.

"Q Did you hear of anything else said that you could recall?

"A No.

"Q What did Mr. Strimple do at that time?

"A He left."

Page 38, lines 16 through 23:

"Q Did you ever see Mr. Strimple on the premises of Bob Bain Chevrolet at any time after that day?

"A Oh, yes.

"Q About how many times?

"A Several times, many times.

"Q Could you approximate the number?

"A I'd say some place between 15 and 30 times.

"Q Did you have any discussions with him at any of those times?

"A No, this was an area when we started selling Nabcor cars.

"Q Do you recall what month or year?

"A No.

"Q Was this during the second time that you were employed at Transit Road by Bob Bain?

"A It would be between March of '67 and September of '68.

"Q This was between March of '67 and September of '68 some time during that --

"A Yes."

Page 40, lines 3 through 23:

"Q Do you know if Dale Strimple had requested cars of Bob Bain at any other time at which Bob Bain refused to give cars to him?

"A I don't have any information on that at all, no.

"Q When is the first time that Dale Strimple requested cars and was able to get them from Bob Bain?

"Mr. Tisdall: He's already answered that, hasn't he?

"Mr. Kaplan: Yes, I think so.

"A It had to be between March of '67 and September of '68, I don't remember exactly when we started to sell the man cars.

"Q Was it after the incident that you described earlier when Mr. Bain and Mr. Strimple were speaking on the showroom floor?

"A Yes.

"Q About how long after that?

"Mr. Kaplan: If you know.

"A I don't know.

"Q Can you estimate the number of months?

"A One to three.

"Mr. Kaplan; Excuse me, on a voir dire. Again, you're guessing, aren't you, Mr. Arnold?

"The Witness: He asked for an estimate.

"Mr. Kaplan: That is a guess, isn't it?

"The Witness; Yes."

Page 53, lines 11 through 23.

MR. KAPLAN: Excuse me, before that goes in I have something to read.

Page 50, line 21:

"By Mr. Person:

"Q Do you know Mr. English?

"A Yes."

Go ahead.

MR. PERSON: Page 53, lines 11 through 23:

"Q Have you ever heard Mr. Bain discuss Nabcor?

"A Yes.

"Q About how many times?

"A Once that I remember."

MR. KAPLAN: This is a portion as to which we have an objection.

THE COURT: Let me look at it.

Objection sustained.

MR. KAPLAN: Before Mr. Person's next section there is an additional passage to read starting at page 56, line 7:

"Q Do you have any information by hearsay or otherwise as to whether Mr. Bain communicated with Mr. English concerning Nabcor?

"A No.

"Q Do you have any information, hearsay or otherwise, about any communications between Mr. Bain and Mr. Womack?

"A No, nothing, Carl.

"Q Any information concerning any communication between Mr. Bain and anyone employed by General Motors concerning Nabcor?

"A None."

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(At the bench)

MR. PERSON: Your Honor, I would like to have you reconsider your ruling on pages 53 through 55. I don't see what the basis for the objection is.

THE COURT: This would be testimony as to what Mr. Arnold heard Mr. Bain say and presumably it would be introduced to show the fact about Bain's reason for not delaing with Strimple. That's a hearsay use of the kind we have talked about many times.

MR. PERSON: Bain is a defendant, your Honor.

MR. KAPLAN: I would only ask an instruction on that passage.

THE COURT: That changes that. The only thing that should be excluded, however -- for how far were you going to read on 55?

MR. PERSON: Down to line 19.

THE COURT: I don't think you can have that answer on line 17. I will exclude that.

His belief? His opinion as to what would happen?

MR. PERSON: He said, your Honor. That's what he's saying.

THE COURT: All right. I'll give an instruction. I had forgotten Bain was a party.